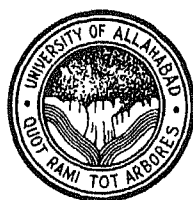


COLLECTIVE SECURITY UNDER UNITED NATIONS : RETROSPECT AND PROSPECTS



Dissertation Submitted to the University of Allahabad
Towards the fulfilment of the requirements
For the award of the Degree of
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IN
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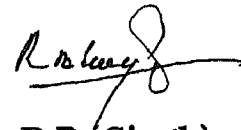
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CERTIFICATE

This is to certify that the present thesis entitled "*Collective Security Under United Nations : Retrospect and Prospects*" submitted to the University of Allahabad for the Degree of Doctor of Philosophy in Defence and Strategic Studies is a bonafide research work carried out by Mr. Dhirendra Dwivedi, under my supervision.

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PREFACE

In the Post-World War II period, the United Nations has emerged as the premier institution of maintaining International Peace and Security. Though U.N. has played an exemplary role as international peace-keeper, but its role as such has not been totally free from flak. The collective security under United Nations is a complex procedure when put into action. The present thesis is a modest attempt at studying critically the operation of collective security under the aegis of United Nations since World War II. Hereby an attempt has also been made towards suggesting a few measures with the view to strengthen and invigorate United Nations as an agency of maintaining International Peace and Security.

The Introductory chapter of this doctoral dissertation traces the development and evolution of such an international organisation which could divert the people from conflict to cooperation. The Chapter also sheds light on the concerns of the world community for world peace as well as the efforts of the leading lights of the world, since the times of Thucydides towards devising the suitable arrangements for ensuring World peace.

The Second chapter dilates upon the concept of collective security as well as compares and contrasts the concept of collective security with the other related concepts.

In the Third chapter, a discussion in detail about the concept and arrangement of collective security as it obtains in the Charter of United Nations has been attempted.

The Fourth chapter is devoted to the critical analyses of some

of the major application of collective security measures by United Nations after the World War II and prior to the Gulf Crisis of 1991.

In the Fifth chapter of the thesis the development of the Gulf Crisis as well as the collective security measures adopted by United Nations to resolve it have been examined in detail.

In the Sixth chapter, an attempt has been made to point out the various challenges that have emerged before the United Nations, regarding the preservation and maintenance of international peace in the Post World War II as well as in the Post Cold War period. While discussing these challenges, the required and requisite response of the world body regarding the discharge of its primary responsibility of providing collective security to the world have been dwelt upon.

In the concluding chapter of this research work, it has been attempted to bring out the shortcomings of the United Nations during its various collective security undertakings throughout the world and then I have attempted to put forward a few suggestions for the reforms of the world body so that it could become more efficient as well as responsive to the needs of global peace and security.

For the completion of this research work, I am greatly indebted to my supervisor, **Dr. R.B. Singh**, Professor and Head, Department of Defence and Strategic Studies without whose enlightened guidance and continuous encouragement, it would have been well-nigh impossible to bring my research work to fruition. Hereby I express for him my deepest sense of respect and gratitude as well as offer my sincerest thanks to him.

I acknowledge my gratefulness to **Professor D.D. Khanna**, who has always been magnanimous in offering his valuable

suggestions when soever I was in need of them. In the same breath, I extend my reverence and thanks to **Professor S.P. Pandey** who has been consistently helpful to me during my endeavour of research.

I am immensely grateful to **Dr. Sanjeev Bhadauria** and **Dr. Sheo Harsh Singh** for their constant encouragement and critical insight in the preparation of this thesis. Inspite of their busy schedule they always spared time to go through the manuscript meticulously at all stages and offered invaluable comments and suggestions which led to considerable degree of improvement in the present intellectual exercise. I must acknowledge a great debt of gratitude for both stimulus and support I received from them throughout my work.

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Finally I extend my thanks to the very enthusiastic librarians and staff of Institute for Defence Studies and Analyses Library, Indian Council of World Affairs Library, Jawahar Lal Nehru University Library, American Information Resource Centre Library, United Nations Information Bureau Library, Nehru Memorial Library, New Delhi, and Library of Department of Defence and Strategic

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At last I thank my parents and brothers whose blessings have enabled me to undertake and complete my research, and then I am very indebted to my better half and daughter Priyanshi who bore with me all along during the completion of this intellectual exercise.

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INTRODUCTION

CHAPTER I

INTRODUCTION

International Organisation is a phenomenon of the multistate system, there are, infact, four prerequisites of the multistate system : the world must be divided into a number of states which function as independent political units ; a substantial measure of contact must develop an awareness of the problems which arise out of their coexistence ; and on that basis come to recognize the need for creation of institutional devices and systematic methods for regulating their relations with each others. Thus, the setting of the stage for international organisation involves the development of the facts of division and interdependence in the external world and the moods of anxiety and dissatisfaction coupled with hopeful determination and creative imagination in the minds of men.¹

World Organisation has become possible and necessary only in the twentieth century. In earlier times groupings of States in various parts of the world attempted to evolve a wider polity to serve their common needs and a succession of civilizations developed universal States, but the most diverse of the ancient empires which was not purely ephemeral extended only from Scotland to Syria. Neither Rameses, nor Asoka, nor T'an T'sai Tsung, nor yet Alexander, nor Haroun Al-Raschid, nor Tamerlane, held so expansive and various a sway; nor did any of them have a comparable political and legal heritage. Only when Columbus, the Cabots, Vasco da Gama and Magellan opened up the sea-lanes of the world did the contact of the continents become sufficiently intimate and continuous to bring together the elements which are

1. Sunil Sondhi, "United Nations in A Changing World", Sanjay Prakashan Delhi, 2000, p-1.

now being fused into a world society. But for another four centuries after the great discoveries Europe remained the political care of the world, and the only unifying factor which made international relations in the wider world a world problem, as distinguished from an agglomerate of unrelated problems in particular areas, was the constant interplay of the interests and policies of the major European powers. In so loosely jointed a society, the elements of world organisation, in any true sense of the term, did, not yet exist.²

In our Search for the ancestors of international organisations, we should perhaps turn first to the city-state system of ancient Greece. This system reflected in miniature most of the essential characteristics of contemporary international politics. Reading through the pages of Thucydides, who has given in a fascinating portrayal of the Peloponnesian War (431-404 B.C.) between Sparta and Athens, we realize that the Greeks had become involved in the intricacies of international bargaining, such as alliances, negotiations, dependencies, threats and bribes, and colling-off periods. It would not be too farfetched to suggest that the alliance-dependency systems of Athens and Sparta are the prototypes of regional military and defence organisations such as NATO and the ex Warsaw Pact.³

The Greek city-states also developed the first model of universal general-purpose international organisations by conceiving the Amphictyonic League. This League was originally a religious organisation of twelve neighbouring tribes, established

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2. C. Wilfred Jenks, "The World Beyond the Charter in Historical Perspectives," *A tentative synthesis of four stages of World Organization*, George Allen and Unwin Ltd. London, 1969, p-21.
 3. Theodore A. Couloumbis, James H. Wolfe, "Introduction to International Relations : Power and Justice," Prentice-Hall of India Private Limited, New Delhi, 1986, p-280.

for the purpose of safeguarding the temple of Delphi. Its functions gradually increased to include the protection of its members from aggressive acts, both within and without the League. Each tribe sent two delegates to League Conferences and was allowed two votes of equal weight. Each tribe took an oath pledging never to annihilate any of the other tribes during warfare. Those considered guilty of acts aggression were to be confronted collectively and with all available means by the remaining tribes.⁴

Over time, the human genius has devised various forms of political institutions, both loose tight, in order to prevent societies from descending into anarchy.⁵ Throughout the middle ages, the concept of a universal polity survived; the concept which found symbolical expression in empire and papacy which were 'held to be something of and for all mankind; embraced only Christendom, and its practical significance in an age of general disorder can readily be overestimated, but it transmitted to modern thought an outlook transcending the frontiers of the national states on the basis of which Europe was to reconstitute its political life and structure from the fifteenth century onwards.'⁶

This new phase in the political life of Europe was to be characterized by the concept of an equilibrium or balance of power. The concept first emerged clearly in fifteenth-century in Italy where it found expression in the Most Holy League of Venice of 1454,

4. *Ibid*, P-280. See also, Adda B. Bozeman, " Politics and Culture in International History," Princeton University Press, 1960, PP. 162-212, Chapter V 'The Place of Rome in International Relations.' and James Bryce, "The Holy Roman Empire," Macmillan, London, 1864, Chapter XV, 'The Empire as an International Power'.

5. *Ibid*, p-281.

6. Geoffrey Barraclough, "History in a Changing World," Basil Blackwell, Oxford, 1956, on pp. 97-104, see "The International Order and the Middle Ages 'and on pp. 105-130' The Medieval Empire : Idea and Reality.

an early anticipation of the Covenant containing an obligation of consultation in the event of war or threat of war and a pledge of common military action against aggression. The Most Holy League was ineffective in practice and from 1494 onwards the Concert of Italy which was in process of developing was destroyed by nearly four centuries of foreign intervention. The drama of the Greek States was re-enacted with France, Spain and the Empire sharing the roles of Macedon and Rome. But this early renaissance diplomacy left one permanent legacy to the European States System, the system of resident ambassadors, then as a system wholly new and extended from Italy to Europe from 1494 onwards. For four and a half centuries thereafter the European States System continued to be based on a balance of power which was at best precarious.⁷

From the late middle ages onwards we can trace an intermittent but recurrent preoccupation by European thinkers, including some of great eminence, with the mutual relations of States conceived as a wider community, a preoccupation which gradually develops into the search for an institutional framework for perpetual peace. The emphasis naturally varies widely with the time and the writer. Italian poet Dante, writing the *Monarchia* about 1310, was still thinking of revitalizing the medieval empire, Pierre Dubois, in 1306 in *De Recuperation Terrae Sanctae* had already conceded that no single individual or government could rule the world and, desiring to revitalize the Crusades, sought to preserve the unity of Christendom by means of a Common Council, formed by the sovereigns of Catholic Europe, which would appoint arbitrators to settle disputes among them ; the sovereign were to bind themselves to use sanctions and war against those who refused to comply with the Council's decisions. The purpose was

7. C. Wilfred Jenks, n. 2, op, cit, pp.-22-23.

not perpetual peace but successful war for the recovery of Holy Land, but we find here already in 1306 three of the basic ideas of the Covenant : a Common Council, Arbitration, and Sanctions, including if need be war against the recalcitrant. Marsilius of Padua, in his *Defensor Pacis* of 1324, envisaged, without undertaking, a 'rational enquiry' into the question 'whether it befits all civilized men in the whole world to have one single government supreme over all, or whether it befits men in the different regions of the world, almost necessarily separated by situation, and especially those who have no common language and who are diverse in manners and customs, to have different supreme government'. George of Podiebrad, King of Bohemia, proposed in 1466 a League of European Princes with an international assembly intended to take over from the Holy See the struggle against the Turk.⁸

During the following five centuries Erasmus, Sir Thomas More, Emeric Cruce, Sully, John Amos Comenius, William Penn, Abbe Saint Pierre, Leibniz, Hume, Jean-Jacques Rousseau, Burke, Jeremy Bentham, James Mill, Immanuel Kant, Saint Simon, William Ladd, William Jay, Gustave de Molinari, Johann Caspar Bluntschli and James Lorimer have advocated various approaches with which to attain global government and perpetual peace.⁹

The great Dutch, humanist Erasmus (1466-1536), in 'The Instruction of a Christian Prince (1516)', elaborated the thesis that war is incompatible with reason and morality. What does war breed but war?', he asks, 'Civility, on the other hand, invites civility, fairness invites fairness.' A good prince, he argues, will never make war until every method has been tried in vain to avoid it. Accordingly, 'the good and Christian Prince should regard every

8. *Ibid*, pp. 23, 24.

9. *Ibid*; p. 24, and see also, n. 3, op. cit. p. 283.

war, however just, as a thing suspect.' His only institutional suggestion is arbitration. There are many bishops, many abbots and learned men, many worthy magistrates, whose judgment, rather than butchery, robbery, and universal calamity, should settle the matter. Erasmus developed this theme further in 'The Complaint of Peace (1517) much of which is a philosophical discussion of man's need to find his safety in association and alliance with his fellow-creatures,' the paradox of 'an insatiable rage for war,' and the failure of Christianity and the Church to establish peace. The prescription for peace which it contains is essentially wisdom and restraint. The 'first and most important step towards peace,' Erasmus tells us, 'is sincerely to desire it.' His only institutional suggestion is again arbitration. Erasmus, preference for arbitration rather than world empire was deliberate. In his treatise on the war with Turkey, he wrote that 'a unified empire would be best if we could have a sovereign made in the image of God, but, men being what they are, there is more safety in kingdoms of moderate power united in a Christian League'.¹⁰

More's Utopia is a sketch of the ideal State, akin to Plato's Republic or Bacon's New Atlantis, rather than a plan for peace. The utopians detested 'war as a very brutal thing' and thought 'nothing more inglorious than the glory which is gained by war;', but they were trained 'to defend themselves, or their friends, from any unjust aggressors' and it was their wont 'out of good nature or in compassion' to 'assist an oppressed nation in shaking off the yoke of tyranny. More, whose utopians regarded colonization as a just cause of war and favoured the use of mercenaries, was not a prophet of international organization but a forerunner of the school of thought which holds that effective world organization

10. *Ibid*; p-24-25.

will be practicable only when the moral progress of man has made it unnecessary.¹¹

While Erasums and More have been a continuing influence upon modern pacifist thought, the concept of maintenance of peace by an international organization first takes a clear form in Emeric Cruce's *Nouveau Cynee* in 1623. Cruce advocated an association of States, with a standing assembly of ambassadors at Venice which was to reach decisions by majority vote and to collaborate in dealing with refractory States, if necessary by pooling the separate armed forces of its members. Cruce saw beyond Europe; his association was to comprise all the nations of the known world. Still more remarkable was the manner in which Cruce foreshadowed the conception that an international organization cannot be content to adjudicate upon disputes but must foresee and dissipate the causes of hostility.¹² It seems to me; he wrote, 'that when you see the house of your neighbour burning or falling, that you have cause for fear.....Since human society is one body of which all the members are in sympathy in such a manner that it is impossible for the sickness of the one not to be communicated to the other.'¹³

Duo de Sully (1560-1641) was perhaps the only successful statesman of the first rank who made a direct personal contribution to the growth of internationalist theory. Sully, who became Henry IV's Chief Minister and trusted counsellor, gave details in his *Memoirs* of an ambitious Grand Design, a scheme that echoed in the Covenant of the Twentieth-Century League. Sully envisaged a Universal Christian Commonwealth of Europe,

11. *Ibid*; p-25.

12. Geoffrey Butler, "Studies in State craft," Cambridge University Press, 1920, pp-91-114.

13. '*Le Nouveau Cynee*', edited and translated by T.W. Balch, Allen Lane and Scott, Philadelphia, 1909, p-8.

with a supreme Grand Council able to consider disputes that threatened the peace and built upon radical territorial adjustments framed to establish a stable order. He proposed that his own country, France, should renounce all territorial claims on other states, as a condition for more harmonious relations between the European nations.¹⁴

The theories, practices, and institutions of modern international society began to take shape, although they did not become crystalized and fully developed until the nineteenth and twentieth century. Machiavely described the practices which prevailed in the relation of the city-states of Northern Italy in the late fifteenth and early sixteenth century and he gave a new realism to the study of interstate relations. Bodin in the sixteenth century formulated the legal concept of sovereignty, generally regarded as the most basic of the attributes of the nation-state.¹⁵ At the same time the Dutch Jurist and theologian Hugo Grotius (1583-1645) was working on his magisterial *De jure belli ac pacis* (Law of War and Peace), published in 1625, in which he sought to lay the basis for legal relations between states and so created the concept of international law. Grotius recognised that there may be circumstances in which war was just and lawful but protested against the prevailing view that powerful rulers could lawfully begin wars whenever they chose. His efforts to make legal distinctions between just and unjust wars were largely ignored in international law until the framing of the League Covenant nearly three centuries later.¹⁶

14. *Geoff Simons*, "The United Nations : A Chronology of Conflict," The Macmillan Press Ltd., London, 1994, p-4.

15. *Norman D. Palmer and Howard C. Perkins*, "International Relations : The World Community in Transition," Scientific Book Agency, Calcutta. 1976, p-300.

16. *Ibid*, p-4.

The Congress of Westphalia was a notable milestone in the development of international organization, as it was in the evolution of the modern state system. The significance of this great Congress has been well described by Gerard Mangone. No international organization was established by the Peace of Westphalia in 1648. But the joining of practically every European state in a diplomatic conference signalled the opening of a new era in international relations. As an international assembly, the Congress of Westphalia bore little resemblance to the intricate organization of twentieth-century peace conferences. Of the greatest importance to international organization, however, were the gathering of hundreds of envoys in a diplomatic conference which represented practically every political interest in Europe and the achievement by negotiation, rather than by dictation, of the great multilateral treaties which legalized the new order of Europe international relations.¹⁷

In 1693 William Penn (1644-1718), the Quaker founder of Pennsylvania, published 'An Essay Towards the Present and Future Peace of Europe', in which he paid tribute to Sully's Grand Design and made his own practical proposals. He starts from the proposition that 'peace is maintained by justice, which is a fruit of government, as government is from society and society from consent.'¹⁸ In deriving society from consent he reflected the current philosophy of the social contract, but in deriving peace from justice, justice from government, and government from society he laid a more permanent foundation for international thought. To secure the peace of Europe the sovereign princes, Penn proposed :

17. Gerard J. Mangone, "A Short History of International Organization," McGraw Hill Book Company. New York, 1954, pp-21-22.

18. 'An Essay Towards the Present and Future Peace of Europe,' 1693, reprinted in Penn, 'The Fruits of Solitude and Other Writings', London Dent, Everyman Edition, 1915, p-6.

there would be a "Sovereign or Imperial Diet, Parliament, or State of Europe ; before which..... Should be brought all differences depending between sovereign and another that cannot be made up by private embassies before the session begin ...' Any 'Sovereignty' that refused to submit a dispute to the assembly would be compelled to comply by the other sovereignties, 'united as one strength. Penn proposes a method of voting in the diet, the majority required for a decision, how delegates should be sent there, and other details.¹⁹ Among the arguments which might be raised against his proposal Penn considered the objection 'that sovereign princes and states will hereby become not sovereign, a thing they will never endure,' this he replied, 'is a mistake for they remain as sovereign at home as ever they were' so that the sovereignties are as they were, for none of them have now any sovereignty over one another.²⁰

The Abbe de Saint Pierre proposed a 'Project for Settling Perpetual Peace in Europe, published in 1712 and periodically revised until 1937, was a further and more detailed elaboration of the Grand Design. It envisaged a permanent and perpetual union among all Christian Sovereigns to preserve unbroken peace in Europe. The European Union was to endeavour to procure in Asia a Permanent Society, like that of Europe, that peace may be maintained there also, and especially that it may have no cause to fear any Asiatic sovereign, either as to its tranquillity or its commerce in Asia. There was to be a City of Peace at Utrecht, where the sovereigns were to be perpetually represented by their Deputies in a perpetual Congress or Senate. No sovereign was to take up arms or commit any hostility, but against him who shall be declared an enemy to the European Society. Differences were

19. *Ibid*, p-8. See also Stefan Passony, "Peace Enforcement," in *Yale Law Journal*, Vol 55, 1945-46 p-916.

20. *Ibid*, pp-14-15.

to be reconciled by the Senate by its mediating commissioners or by arbitral judgment, to be given only after each senator had received the instruction and orders of his master and communicated to the Senate. A sovereign taking up arms before the Union had declared war or refusing to execute a regulation of the society, or a judgment of the Senate, was to be declared an enemy to the society, and it was to declare war upon him. The project elaborated these proposals in considerable detail.²¹

Leibniz continued to recommend the rational development of the conception and institutions of the Holy Roman Empire in such a way as to give it a restored hegemony of Europe.²² Perpetual Peace, stimulated the French political philosopher Jean Jacques Rousseau (1712-78) to publish in 1761 his judgment on a Plan for Perpetual Peace.²³ Rousseau's largest contribution to the debate was his insistence that the nations can escape from anarchy only by conceding that there is a general will transcending themselves, forming organs for its expression, and training themselves to recognize it.²⁴ Jermy Bentham "Plea for an Universal and Perpetual Peace" in his Principles of International Law (1793),²⁵ advocated a Common Court of Judicature to eliminate the necessity for war, but appears to have been, and was certainly understood by his followers as being, opposed to collective security arrangements as a potential threat to popular movements. He is also credited with the substitution of the term 'international law' for the earlier term 'the law of nations.' James Mill restated more clearly the same thesis that war could be avoided by independent

21. C. Wilfred Jens; n. 2, op. cit. pp-28-29.

22. F.H. Hinsley, " Power and the Pursuit of Peace," Cambridge University Press, 1963, pp. 29-31.

23. Geoff Simon, n. 14 op. cit. p. 4.

24. C. Wilfred Jens, n. 2 op. cit. p. 29.

25. Norman D. Palmer and Howard C. Perkins, n. 15, op. cit. p-300.

civilized states with the aid of nothing but public opinion and a rational body of international law; governments as between nations was impracticable and the only power which could operate to sanction the law of nations was the approbation or disapprobation of mankind; the future lay with a code and a tribunal.²⁶

Such ideas in turn influenced the German philosopher Immanuel Kant (1724-1804) who, in the essays 'An Idea for a Universal History from a Cosmopolitan Point of View' (1784) and 'Perpetual Peace' (1795), argued for an international league of constitutional democracies governed by the rule of law. In 'Perpetual Peace' Kant declared : "Nature will drive men with the scourge of war, with the extravagant and ever-growing burden of armaments, the weight of which must be felt in the end by every state even when at peace : she will compel them to make attempts, halting at first and incomplete, and then, after much desolation, destruction and revolution, to do what reason could have taught them at once without so many bitter experiences, namely to give up their lawless life of savages and enter a League of Nations, an organisation where every state, even the smallest, can expect security and peace, not from its own power or its own decision as to what is right in its own cause, but from this great Society of Nations." Here there were principles rather than a detailed plan : states should be run by constitutional governments rather than by totalitarian despots; no state should interfere with another; standing armies should be gradually disbanded ; foreign loans should be forbidden. The Kantian prescriptions served as an inspiration to activists in America and elsewhere seeking to create the League of Nations.²⁷

Saint Simon's 'The Reorganization of the European

26. C. Wilfred Jens; n. 2 op. cit. p-30.

27. Geoff Simons, n. 14, op. cit. p-5.

Community' was, to use his own words, 'hurried into print' in 1814 in the hope of influencing the Congress of Vienna and was addressed by him to the Parliaments of France and England. 'Until the end of the fifteenth century,' he contended, 'all the nations of Europe formed a single body politic, at peace within but armed against the enemies of its constitution and its independence.'²⁸ Formerly Europe consisted of a federal community united by common institutions, subject to a common government which was in the same relation to the different peoples as national governments are to individuals. The past could not be revived, but France and England should act together to reorganize Europe on the basis of liberal principles.²⁹

The Congress of Vienna (1814-15) met to deal with the European political problems which remained after the defeat of Napoleon. The rulers of Europe succeeded only partially and temporarily in their attempt to restore the old order, but unwittingly they laid the foundations of a political and international system which for a century shaped the course of European and to some extent of world affairs. The central agency for enforcing the Vienna Settlement was the Quadruple Alliance of Austria, Great Britain, Prussia, and Russia, which became a quintuple alliance in 1818 with the addition of France.³⁰ This development was a landmark in the history of international organization for several reasons. First, the alliance, though forged in war, was continued after hostilities to enforce the peace. Second, period conferences were instituted when the great powers agreed to renew their meetings at fixed intervals. Third, despite

28. *Translated with an introduction by F.M.H. Markham, Claude Henssi, Comte de Saint Simon ; 'Selected Writing, Blackwell, London, 1952, p-30.*

29. *Ibid*, pp-32-33.

30. *Norman D. Palmer and Howard C. Perkins; n. 15, op. cit. P-301.*

the suspicions of the smaller powers it was generally agreed that the maintenance of peace depended on this sort of big power collaboration. These nations were carried over into both the League and the U.N.³¹ Out of the experience of the years that followed the Congress of Vienna emerged the informal pattern of conferences and consultations and occasional concerted action which is known as the Concert of Europe.³² The Concert of Europe was an exclusive club for great powers, whose members were self appointed guardians of the European Community and executive directors of its affairs. They some-times admitted smaller countries to their meetings and occasionally failed to dominate the scene as completely as they wished, but they left no room for doubt that the Concert of Europe was in fact a Concert of the Great Powers.³³

In 1816, following the efforts of the Quaker William Allen, The Pacifist Peace Society was founded, followed by the monthly Journal Herald of Peace, sent to public libraries, ministers of religion and Members of Parliament. A branch of the London-based Peace Society was formed in 1827 in Birmingham under the leadership of the Quaker Joseph Sturge. Quaker's pacificism was often attacked by mainstream Christian writers. American Peace Society was founded in 1828 when William Ladd of New Hampshire welded together a number of local groups. Ladd himself advanced ideas that would later influence the Shaping of the League of Nations and the United Nations. He proposed, for example, the development of international law and the creation of an international court : First-A congress of ambassadors from all

31. *Daniel S. Cheever and H. Field Haviland, Jr., "Organizing for Peace : International Organization in World Affairs,"* Houghton Mifflin Company, Boston, 1954. p-35.

32. *Norman D. Palmer and Howard C. Perkin ;* n. 15, op. cit. p. 301.

33. *Sunil Sondhi;* n. 1, op. cit. pp 2-3.

those Christian and civilised nations who should choose to send them, for the purpose of settling the principles of international law by compact and agreement, of the nature of a mutual treaty, and also of devising and promoting plans for the preservation of peace, and meliorating the condition of man. Second-A Court of nations, composed of the most able citizens in the world, to arbitrate or judge such cases as should be brought before it, by the mutual consent of two or more contending nations.³⁴

The Monroe Doctrine (1823) of the United States was an early, if toothless proclamation of regional independence against external (i.e., European) intervention and manipulation. The Peace of Paris (1856), following the Crimean war, reaffirmed the Principle of national self-determination and applied it to the disputed provinces of Wallachia and Moldavia. In the Declaration of Paris in 1856, laws of war and rights of neutrals were identified. This year marked the take-off point of international law. The Brussels Congress (1874) resulted in a code of land warfare approved by fifteen nation-states. The Berlin Conference (1884-1885) continued earlier attempts to abolish the slave trade. It also sought to split the pie represented by European colonization of the Third World (which was then referred to contemptuously by the Europeans as *terra nullius*-"no man's land"), so as not to disrupt the stability of the balance-of-power system.³⁵

One of the most promising developments in the history of international organization was the emergence of a multitude of international administrative agencies of public international unions in the latter half of the nineteenth and the early twentieth centuries. They arose in the response to the growing need for

34. *Geoff Simons*; n. 14, op. cit pp-5-6.

35. *Theodore A. Coloumbis and James H. Wolfe*; n. 3, op cit pp-282-83.

cooperation in economic and social problems which could not be handled satisfactorily by states alone or without planned coordination. Among the organization set up were the European Commission for the Danube (1856) ; the International Geodetic Association (1864) ; the International Bureau of Telegraphic Administrations (1868) ; the Universal Postal Union (1875) ; the International Bureau of Weights and Measures (1875) ; the International Copyright Union (1886) ; the International Office of Public Health (1903) ; and the International Institute of Agriculture (1905).³⁶ Some of these are still in existence ; others have given over their functions to UN agencies. One of the UN affiliates - the Universal Postal Union has been described as "one of the most significant international organization in the history of nations."³⁷

With the Hague Conferences (1899 and 1907), an important threshold was crossed on the way to international institutionalization. On 24 August 1898 Tsar Nicholas II of Russia proposed a conference to achieve the purpose 'of insuring to all peoples the benefit of a real and durable peace, and, above all, of putting an end to the progressive developments of present armaments.' Representatives of 26 nations assembled on 18 May the following year at The Hague, the first international conference to have legislative features. At the 1899 Hague Conference (18 May-29 July) the question of arms limitation went unresolved but The Hague Tribunal (Permanent Court of Arbitration) was set up and a ban was imposed on poison gas, 'dumdum (expanding) bullets, and aerial bombardment from balloons. Forty-four nations attended the second International Peace Conference at The Hague (15 June-18 October 1907). Again no agreement was

36. Gerard J. Mangone: n. 17, op. cit. pp. 67-90.

37. Ibid, p. 78.

reached on arms limitation, though agreement was reached on the right of neutral shipping, general conventions on land and sea warfare, and on the banning of submarine mines. A third Conference was cancelled because of the outbreak of the First World War, but now the basis had been laid for the creation of the League of Nations.³⁸ Unlike the great-power conferences of the nineteenth century, the Hague Conferences established rules that were designed to achieve settlements immediately after wars and crises, the Hague Conferences were preventive and regulatory in nature. Moreover, the great-power conferences had been the work of the few and powerful. In contrast, the Hague Conferences exhibited the legitimization process that only full participation-of small as well as great powers-can bring about.³⁹

The Hague Conferences have been portrayed by Inis Claude as the precursors of the United Nations General Assembly. The egalitarian concept of "one nation, one vote " was clearly reflected in the Hague movement. Resolution adopted by majority vote (rather than unanimously) gradually became an acceptable rule of international organization. The occurrence of the Hague Conferences reflected the decision of the participating governments to limit their sovereignty voluntarily in order to aid in the development of rules of international law designed to minimize conflict in the international system and to maximize cooperation and condition.⁴⁰

A permanent general international organization of a nearly universal character came into existence for the first time after World WarI. This development marked another stage in the history of international organization. The new era owed much to the

38. *Geoff Simons*; n. 14, op. cit. p-7.

39. Theodore A. Coulombis and James H. Wolfe ; n. 3, op. cit. p-7.

40. *Ibid*, p-284.

experience and experiments, including the many abortive plans and projects, of the past. "Modern international organization", stated Mangone, "with its wide array of institutions, evolved from the Conferences of the preceding centuries. In the new world of the twentieth century the older techniques were not adequate, but they did provide the foundations upon which the present complex structure of international organization has been built."⁴¹

Organized peace as a war aim had been expressed in Great Britain as early as 1914, when Prime Minister Asquith spoke of "a real European partnership based on the recognition of equal right and established and enforced by a common will." Professed war aims of this type found a sympathetic response in the United States-increasingly so as the sentiment of neutrality gave way to participation on the side of the Allies. Theodore Roosevelt had already suggested, in accepting the Nobel Prize in 1910, that "it would be master stroke if those great powers honestly bent on peace would form a League of peace, not only to keep the peace among themselves, but to prevent by force if necessary, its being broken by others." This "League for peace" idea had received wide acceptance by the early months of the war. In April, 1915, a "Central Organization for a Durable Peace" was created at The Hague. On May 3, 1915, the British "League of Nations Society" adopted a program calling for "a treaty binding members to peaceful settlement of all disputes "and for united action to see that "every member shall abide by the terms of the treaty."⁴²

The plan of the American "League to Enforce Peace," stated by former President Taft at Cleveland, Ohio, on May 12, 1915,

41. Norman D. Palmer and Howard C. Perkins; n. 15, op. cit. p-302.

42. Willard N. Hogan, "International Conflict and Collective Security : The Principle of Concern in International Organization," University of Kentucky Press, 1955, pp-4-5.

had four major points : a court for justiciable disputes ; a conciliation commission for other disputes ; conferences for the development of international law; and an agreement "that if any member of the League shall bring war against any other member of the League, without having first submitted the question, if found justiciable, to the arbitral court provided in the fundamental compact, or without having submitted the question, if found non-justifiable, to the Commission of Conciliation for its examination, consideration and recommendation, then the remaining members of the League agree to join in the forcible defence of the member thus permanently attacked."⁴³

Thomas Woodrow Wilson (1856-1924), a university law professor and the twenty-eight President of the United States, was one of the principal architects of the League of Nations. On May 27, 1916, President Wilson, speaking before the League to Enforce Peace, endorsed the idea of a universal association of nations to keep the peace and asserted the willingness of the United States to become a partner in such an enterprise. Apparently Wilson at the time hoped that such a League might be created on the basis of "peace without victory." This approach was followed by the Lansing note of December 18 to the belligerents, asking for a statement of peace terms. An appeal for "peace without victory" was reiterated by Wilson himself as late as his address to the Senate on January 22, 1917. In his war message to Congress in April, Wilson stated that the object was to "vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of action as will henceforth ensure the observance of those principles."⁴⁴

43. *Ibid*; p-5.

44. *President Woodrow Wilson's State Papers and Addresses*, New York, 1918.

On 8 January 1918, in a message to the U.S. Congress, Wilson detailed the conditions of peace for the normalisation of international relations at the end of the Great War. The Preamble to this speech includes the words : 'What we demand..... is that the world be made fit and safe to live in; and particularly that it be made safe for every peace loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of world as against force and selfish aggression.' There then follow the celebrated Fourteen Points variously urging open diplomacy (i) freedom of navigation on the seas (ii) free trade (iii) a reduction in armaments (iv) an adjustment of all colonial claims (v) and matters of territorial adjustment and sovereignty (VI-XIII), The final Point (XIV), the herald of the League urged that ; A general association of nations must be formed under specific covenants for the purpose affording mutual guarantees of political independence and territorial integrity to great and small states alike. On 30 May 1919, in his Memorial Day Speech at the American graveyard at Suresnes near Paris, he included the words, "it is our duty to take and maintain the safe guards which will see to it that the mothers of America and the mothers of France and England and Italy and Belgium and all the other suffering nations should never be called upon for this sacrifice again. This can be done. It must be done, and it will be done. The great thing that these men left us.....is the great instrument of the League of Nations." Two months later, on 10 July, Wilson presented the Versailles Treaty (which includes the Covenant of the League of Nations) for the approval of the U.S. Senate.⁴⁵

It was decided that the Conference would be held in France, not least as a gesture to Clemenceau's premiership and as a

45. Geoff Simons, n. 14, op-cit. pp-7-8.

recognition that France was now the main continental power. The delegates for the participating nations were accompanied by vast numbers of permanent officials technical advisors, secretaries and clerical assistants. The leading power began informal discussions on 9 January 1919. On 12 January the five-power Supreme War Council (Comprising Britain, America, France, Italy and Japan) was established, to be joined by the Minor Powers only when matter concerning them were discussed. The Conference was formally inaugurated on 18 January at a plenary meeting at the French Foreign Office. Here Clemenceau, having been elected permanent president declared that the programme of the Conference had already been laid out by President Wilson, and that now the aim was not just a Continental Peace but a peace of peoples. On 25 January a resolution to establish the League, moved by President Wilson and seconded by Lloyd George, was passed in plenary session. The third plenary sitting was held on 14 February to discuss in detail the Covenant of the League of Nations, after which President Wilson returned to America for a short visit. When Wilson returned from America on 13 March he immediately streamlined the council of five reducing the ten members (two from each of the five) to four men (one from each of Britain, the United States, France and Italy). On 25 March Clemenceau himself was attacked in the French Chamber of Deputies, and two days later President Wilson found it necessary to issue a statement denying that the delay in establishing a European peace had anything to do with the institution of the League of Nations.⁴⁶

On 28 April 1919 the fifth plenary session settled and approved the draft of the Covenant of the League; on 5 May a further plenary approved the Treaty of Peace, but on 23 June her

46. *Ibid*, pp-9-10.

final submission was announced. Five days later on 28 June, in the famous Hall of Mirrors at Versailles, Germany signed the Treaty of Peace. Clemenceau was at last able to declare : 'the signature of the conditions of peace between the Allied and Associated Powers and the German Republic is an accomplished fact. The session is adjourned.' President Wilson was keen that the League Covenant be made part of the Peace Treaty : in this way the existence of the Covenant would be assured even if there was significant public and political movement against the idea of the League. In fact, Wilson managed to secure the Covenant as the first Section of the fifteen-Section Peace Treaty (the Treaty of Versailles).⁴⁷

The Covenant of the League of Nations, which formed Part I. Article 26 of the Treaty of Versailles, was signed on June 28, 1919, and came into effect on January 10, 1920.⁴⁸ The Origin of the name "League of Nations; known in French, perhaps more accurately, as *La Socié'te' des Nations*.⁴⁹ Its purpose was maintaining international security and the promotion of international cooperation. The avoidance of war by the peaceful settlement of disputes was the main objective of the League.⁵⁰

The Covenant that finally emerged after long and bitter argument provided for a League of Nations with three main organs ; the Assembly, the Council and the Secretariat Perhaps next in importance were the Permanent Court of International Justice, the International Labour Organization, and the Technical

47. *Ibid*, pp-10-11.

48. *Frederic H. Hartman, "The Relations of Nations", The Macmillan Company, New York, 1968, p-178.*

49. *F.S. Northedge and M.J. Grieve, " A Hundred Years of International Relations, Gerald Duckworth and Co. Ltd. London, 1971. p-138. See also. F.P. Walters, "A History of the League of Nations," Oxford University Press, London, 1952, Vol I, p-18.*

50. *A.N. Bharadwaj, "Failures of the U.N.O," Anmol Publication Pvt. Ltd., New Delhi, 1996, p-20.*

Organizations. Assembly members were to present for discussion "any circumstances whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends. The Assembly's function, however, was not to act but to confer, advise and deliberate. The Council was planned as the executive organ of the League. Although the great powers wished to have its membership restricted to themselves, they had to give way and admit a limited number of smaller states. Thus the Council was designed to consist of five great powers with permanent seats,⁵¹ e.g., originally France, Great Britain, Italy, and Japan to which were later added Germany and the Soviet Union, and four lesser powers with non-permanent seats. Their numbers were increased successively until in 1936 the Council comprised eleven nonpermanent members.⁵² The Council was to direct the work of the Secretariat, arrange for international conferences, receive reports from the subsidiary organs of the League, determine which reports should be submitted to the Assembly, deal with disputes among League members, and supervise the observance of mandates, the minorities treaties, and other agreements. Upon it rested primary responsibility for safeguarding the peace of the world.⁵³

The Secretariat was a permanent civil service headed by a Secretary-General. Its work was to assist all organs of the League by providing services of many kinds. Clerical, research, drafting, publication, coordination, registration of treaties, keeping of records, arrangement of meetings, and the like. The Statue of the

51. Norman D. Palmer and Howard C. Perkins; n. 15, op. cit. p-302.

52. Hans J. Morgenthau, "Politics Among Nations : The Struggle for Power and Peace," Scientific Book Agency, Calcutta, 1973, p-445.

53. *Ibid*, p-303.

Permanent Court of International Justice was completed in December, 1920. By the start of the World War II fifty-one states had become members of the Court. Although the International Labour Organization was regarded as one of the main organs of the League of Nations. It became a specialized-agency of the UN in December, 1946.⁵⁴ The Legal structure also contained three so-called Technical Organizations : the Economic and Financial Organization, the Communication and Transit Organization, and the Health Organization. Each had its Standing Committees and each held general conferences from time to time, "thus resembling the League as a whole with its Council and Assembly."⁵⁵

The League consisted throughout its life of most of the fifty-odd states of the inter-war international system; it was the first permanent international organization for general purposes to embrace the whole international community, though participation in its work by the great powers was intermittent. Britain and France remained members from its formal birth in 1920 until its formal death in 1946. Japan and Italy, allies of Britain and France in the First World War were also members with permanent seats on the League Council from 1920 until Japan withdrew in 1933 and Italy in 1937. Germany, the leading Central power opposed to the Entente during the war, was kept out of the League until the partial Franco-German reconciliation which followed the Locarno treaties in 1925. Germany then entered the League as a permanent member of the League Council in 1926 and withdrew in 1933, following Hitler's accession to power and the failure of the world disarmament conference which opened in February 1932. Soviet Russia joined the League in 1934, only to be expelled, the only member-state to suffer this experience, when her forces

54. *Ibid*, p-303.

55. *Pitman B. Potter*, "An Introduction to the Study of International Organization, " Appleton-Century, New York, 1935, p.39.

invaded Finland in 1939. Finally, the United States, whose President in 1919, Woodrow Wilson, was the chief influence in attaching the League's Constitution, the Covenant, to the peace treaties as the first twenty-six articles of each of them, refused to ratify the treaties and hence never became a League member.⁵⁶

The League of Nations was established in order to promote cooperation among states and achieve the goal of international peace and security.⁵⁷ The various drafts which formed the basis of the Covenant of the League clearly showed that there was an awareness of the need for an international mechanism by which peace could be ensured by the combined use of force. Thus it was only in the League of Nations that the idea of Collective Security was accepted in a practical sense of the term. Once accepted, this idea was sought to be effective in the efforts made during the interwar period for the improvement of the machinery of international organization.⁵⁸ The Covenant had some very meaningful provisions (Art. 10 to 16) for the maintenance of Collective Security System.⁵⁹

The members of the League undertook to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. It showered relief to bring an era of peace and amity, but such hopes, however, were soon belied. The Treaty of Locarno of 1925 signed between France, Great Britain, Germany, Italy and Belgium whereby Germany, France and Belgium undertook to maintain their present mutual frontiers and to abstain from the use of force against each

56. F.S. Northedge and M.J. Grieve; n. 48, op. cit. p-138.

57. J.C. Johari, "International Relations and Politics", Sterling Publishers Private Limited, New Delhi, 1985, p-281.

58. Mahendra Kumar, "Theoretical Aspects of International Politics," Shiva Lal Agarwala and Company, Agra, 1981, p-407.

59. J.C. Johari, n. 57, op. cit. p-281.

other. Britain and Italy guaranteed the Pact, assuring mutual assistance in the event of violation. The Treaty emphasised the belief of nations to settle their disputes peacefully in accordance with the Covenant of the League of Nations. Close on the heels of the Treaty of Locarno, an international agreement was signed in 1928 on the initiative of Frank B. Kellogg, U.S. Foreign Secretary, by which almost all the nations of the world condemned war as an instrument of settling international disputes and pledged to settle their differences by peaceful methods. Afterwards, representatives of 47 Governments at Geneva Conventions on the treatment of Prisoners of War and amelioration of the condition of the wounded and sick in Armies in the field. The Convention made the efforts to look after war prisoners and to restore peace and confidence.⁶⁰

The famous French Marshal, Ferdinand Foch, referring in 1919 to the post-World War I settlement at Versailles, remarked prophetically : "this is not peace. It is an armistice for twenty years." The League of Nations was soon put to the peace-keeping test. In a period of twenty years, the new world organization became involved in over sixty political disputes. During the same period, approximately sixty more disputes were legally defined and eventually presented before the Permanent Court of International Justice. Many other disputes were dealt with by reparations commissions, conferences of ambassadors, and other subsidiary bodies that remained in operation for a time as a result of World War I.⁶¹

Despite the general reputation of the League as a dismal failure in maintaining peace, the statistical record tells a different story. According to scholars Plano and Riggs, the League was

60. A.N. Bharadwaj, n. 50, op. cit, p-21.

61. Theodore A. Coulombis and J.H. Wolfe ; n. 3, op. cit. pp-285-86.

successful in solving more than half of the disputes that come to its attention.⁶² The League failed decisively only in five major instances :

- (i) During 1931, the League failed to prevent Japanese aggression against China in Manchuria. The League, no doubt, condemned the violation of the obligation of the Covenant and kept mum.
- (ii) During Ethiopian Crisis of 1935-36, when Italian forces invaded the independent African State, the matter was immediately brought to the attention of League ; and when Italy refused to suspend hostilities the Council of the League, in spite of Italian protests, voted to impose sanctions against Italy. The Italo-Ethiopian War thus became the chief test case.
- (iii) Germany infringed the Charter of the League in very different manner and re-occupied Rhineland in 1936 and Austria was also annexed in 1938. Despite the Munich appeasement, Czechoslovakia in 1939 could not be opposed by the League, and finally attacked Poland in 1939.
- (iv) During Spanish civil war, when Mussolini and Hitler openly supported the revolt of Gen. Franco in Spain in 1938, both Britain and France incapacitated the League by sticking to the course of non-intervention.
- (v) The League stood helpless while Russia invaded Finland in 1939.⁶³

62. C. Plano and Robert E. Riggs, "Forging World Order : The Politics of International Organization," Macmillan, New York 1967, p-28.

63. Norman D. Palmer and Howard. C. Perkins; n. 15, op cit. pp. 244-45, and J.C. Johari., n. 57, op. cit. pp. 281-283. See also, Geoff Simons; n. 14, op. cit. pp. 26-31.

This dismal failure of the League in securing peace to the innumerable people all over the world resulted in the reversion of nations to the old policy of pacts, alliances and blocks with a view to maintaining the balance of power, instead of placing reliance on the League. The leaders of member countries who organised the League for the peace and security, violated the Charter of this organization on their own accord for their selfish interests which damaged its fundamental object, which remained un-successful to control or prevent the aggression. There was un-willingness on the part of the states in general to assume international obligations in the common interests.⁶⁴

Three serious weakness in the organisation of the League were viewed as adversely affecting its capacity to maintain peace : (i) the rule of consensus made it difficult to take decisions ; (ii) the lack of differentiation between the Assembly and Council in dealing with security questions caused confusion and delays and led to inaction ; and (iii) the provisions in the League Covenant for enforcement measures were inadequate and ineffective, at least as interpreted by the membership.⁶⁵

The impact of the League was constrained in various ways, not least by the fact that many important states remained outside the League for all or part of its existence. Germany, Italy, Japan and the United States were absent from the League for all or part of its history, though there were many times when such states contrived ways of influencing the League's procedures and decisions. The Soviet Union did not join the League until 1934, impelled to membership by fear of Hitler, but was expelled from

64. A.N. Bharadwaj ; n. 50, op. cit, p-23.

65. James S. Sutterlin, "The Past As Prologue," in Bruce Russett, ed "The Once and Future Security Council," Macmillan Press Ltd. London, 1997, p-2.

the League in 1939 because of its war on Finland. In 1920s the Soviet Union had denounced the League as a mere contrivance of a few capitalist powers. The United States was equally antipathetic to the young international body. In 1932 Roosevelt became the first Democratic candidate to denounce the League and said : 'I do not favour American participation'.⁶⁶

The League was launched at a difficult moment, and its expectations were naive. The participants never could accept the fact that there was a contradiction between their own reluctance to go to war, and the need to rely on free to uphold both their own interests and the stability of the new international order they had created. In a very fundamental way and for very basic reason the League failed and was doomed to fail. But the idea of collective Security was not dead.⁶⁷ Gerhart Niemeyer concludes that the League did not measure up very well to the standard of a world community, and calls for further study of the actual impact of international organizations as instruments of international politics.⁶⁸

From the beginning of the Second World War it was taken for granted in most countries that a new international organization would be required at its end. There was little disposition to revive the League, whose manifest failures were so universally deplored, and which was anyway already almost defunct by the time war began (though it still maintained a lameduck existence in Geneva).

66. *Geoff Simons*; n. 14 op, cit. p-32.

67. *Zara Steniner*, "Introductory Essay," in *The League of Nations in Retrospect*, "Proceedings of the Symposium, Organised by The United Nations Library and The Graduate Institute of International Studies, 6-9 November 1980, Published by Walter de Gruyter, Berlin, New York, 1983, p-14.

68. *David A. Kay, ed*, "The United Nations Political System," John Wiley and Sons, Inc. New York, 1967, p-29.

A new organisation would symbolise the birth of a new world, in which peace would now at last be more effectively safeguard.⁶⁹

The preparations in Washington for a new international security organization began even before the United States entered the Second World War. They were a logical outgrowth both of the generation-old Wilsonian prescription for world peace, carefully nurtured by the various League of Nations Societies, and of the view of President Franklin D. Roosevelt, already fully developed during the debates over neutrality legislation in the 1930s' that the only way to avoid American involvement in major wars was to prevent new conflicts from developing in the future or at least to keep them from spreading throughout the world. This was the message of Roosevelt's famous "Quarantine Speech" in Chicago on 5 October 1937. It was also the meaning of his statement, made in a national radio address on 3 September 1939, that "when peace has been broken anywhere, peace of all countries everywhere is in danger." The truth of this seemed to be demonstrated during the next two years as the United States was drawn inexorably into the wars being fought in Europe and Asia. Following the Japanese attack on Pearl Harbour, the appeal of the idea that peace was indivisible-and thus must be protected by an international organization-grew with American power, by the end of the war, leaders in Washington would feel responsible for maintaining the peace more or less everywhere in the world, at least partly because of their desire to avoid the errors of the past and prevent another world conflict.⁷⁰

69. *Evan Luard*; "A History of the United Nations: The Years of Western Domination (1945-1955)," The Macmillan Press Ltd, London, 1982. p-17.

70. *Robert C. Hilderbrand*, "Dumbarton Oaks : The Origins of the United Nations and the Search for Postwar Security," The University of North Carolina Press, Chapel Hill and London, 1994, p-5.

Roosevelt efforts produced an almost immediate renewal of public interest in planning for postwar security. On 13 November 1939, a Washington Post editorial commented that it was "Certainly not too soon to begin thinking about and planning for that new and more orderly world "to be" ushered in when the guns are stilled."⁷¹ A week earlier, a new organization, the Commission to Study the Organisation of Peace, had been formed in New York City and elected James T. Shotwell, who had just resigned the presidency of the League of Nations Association, as its first president. This new body would develop and publicize the ideas of the American internationalists, which had been out of favour for a generation in the United States, for a world peacekeeping agency; its initial report, released on Armistice Day, 1940, would set the tone for all efforts in this direction by saying that "the world must evolve from League to federation. "Offers of assistance in the administration's postwar planning came from a number of public and private organizations, including the Council of Foreign Relations, whose executive director, Walter H. Mallory proposed that the Council prepare studies on postwar problems and security and make them available to the State Department. Similar offers of aid come from other groups, including such religious organizations as the Federal Council of Churches of Christ of America, which established its own Commission to Study the Bases of a Just and Durable Peace."⁷²

The direct lines of origin of the United Nations may be traced to the wartime declarations of intent to establish a postwar organisational system. On 6 January, 1941, U.S. Congress referred to the celebrated Four Freedoms which had been the casualties of the war. These were : (a) Freedom of speech and expression ;

71. *The Washington Post*, 13 November 1939.

72. Robert C. Hilderbrand, n. 70, op. cit. p-6.

(b) Freedom of religion ; (c) Freedom from want ; (d) Freedom from fear-called for a reduction of armaments following the war to make any future act of aggression impossible.⁷³

The first official announcement of the intention to create a post-war international organization was made on the occasion of the signing of the London Declaration at St James's Palace on 12 June 1941, when representatives of fourteen states announced their determination to pursue their common struggle against Nazi and Fascist tyranny to a victorious conclusion and that none of them would enter into a separate peace with the enemy. They then declared their intention of creating a world in which, 'relieved of the menace of aggression, all may enjoy economic and social security.'⁷⁴

On 9 August 1941, the President Roosevelt suggested to the British Prime Minister, Winston Churchill, that they should draw up a joint declaration laying down certain broad principles which should guide their policies along the same lines. This suggestion was readily accepted by the Prime Minister and on the following day he outlined a tentative declaration which provided the substance and spirit of what came to be called the Atlantic Charter. On 12 August 1941, President Roosevelt and Prime Minister on board the Prince of Wales ship in the Atlantic Ocean (Placentia Bay) signed the Charter which embodied certain common principles in the national policies of their respective countries on which they based their hopes for a better future for the world.⁷⁵ The Atlantic Charter, issued on 14 August 1941,

73. *Franklin D. Roosevelt, Annual Message to Congress*, 6 January 1941, 77th Congress., 1st Session. pp. 44-47. H. Document. 1.

74. Sir John Wheeler, Bennett and Anthony Nicholas, "The Semblance of Peace : The Political Settlement after the Second World War," Macmillan, London, 1972, p-534.

75. Sunil Sondhi, n. 1, op. cit. p. 7.

spoke of the creation of a 'wider and permanent system of general security,' which would 'afford to all nation the means of dwelling in safety within their own boundaries' at the words end.⁷⁶

This was followed by the Washington Declaration of 1 January 1942, at Washington, D.C., representatives of 26 nations signed the United Nations Declaration ('United Nations' was the term devised by Roosevelt). A principal purpose of Declaration, later signed by 21 other nations, was to approve the aims of the Atlantic Charter. For the first time, the creation of the Organization of the United Nations was on the serious political agenda.⁷⁷ In the United Nations Declaration the signatories subscribed to the 'common programme of purpose and principles' embodied in the Atlantic Charter, pledged themselves to the defence and preservation of life, liberty, independence and religious freedom and 'to preserve human rights and Justice in their own lands as well as in other lands,' and further undertook (i) to employ their full resources, military or economic against the Axis Powers, and (ii) not to make a separate armistice or peace with the enemy.⁷⁸ The signatories to the Washington Declaration were; the United States, Great Britain, the U.S.S.R. China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, the Dominican Republic, El-Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxemburg, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa and Yugoslavia.⁷⁹

Prime Minister Churchill and President Roosevelt met in a

76. *Evan Luard* ; n. 69, op. cit., p-17. For an excellent discussion of the Atlantic Charter meeting, See Ruth B-Russel and Jeannette E. Muther, *A History of the United Nations Charter*", Washington D.C. 1958, Chapter I.

77. *Geoff Simons*, n. 14, op. cit. p-36.

78. *Sir John Wheeler, Bennett and Anthony Nicholas*, n. 74, op. cit. pp. 537-38.

79. *Sunil Sondhi*, n. 1, op. cit. p-9.

conference at Casablanca in north west Africa (14-24 January 1943) and announced that the terms for Germany, Italy, and Japan would be 'unconditional surrender', denying them the benefit of a negotiated peace. This was unique. For many centuries the European powers had been at war with one another but while continuing to fight they looked forward to an early accommodation. For this reason war had never failed to be attended by either open or secret negotiations. Casablanca was, therefore, an innovation of positively revolutionary scope for it invited Germany, Italy and Japan to fight on the their last man and bullet since the only alternative offered to them was political extinction.⁸⁰

On 30 October 1943, foreign ministers of Great Britain, Russia, and the United States, and the Chinese ambassador to Russia, on behalf of their governments, pledged that "their united action" would be continued for the organization and maintenance of peace and security," and declared that they recognized "the necessity of establishing at the earliest practicable date a central international organization, based on the principle of sovereign equality of all peace-loving states and open to membership by all such states, large and small." This declaration was particularly significant in that it marked for the first time that the Soviet Union had agreed in specify to terms to the establishment of a world organization after the war.⁸¹

A month later in Nov 1943, Roosevelt, Churchill and Soviet Premier Joseph Stalin met at Tehran for the first inter-allied Conference of the Second World War. The subjects discussed included the Soviet entry into the war against Japan, the

80. *Ibid*, p-9.

81. Norman D. Palmer and Howard C. Perkins, n. 15, op. cit. p-311.

co-ordination of Allied landings in France with the Soviet offensive against Germany, the future of Poland, and the creation of a post-war international organization to preserve the peace. The three leaders declared that they recognised their supreme responsibility, and what would be the responsibility of the United Nations, to work for a world without war.⁸²

It was well understood in the United States that if America were to have maximum influence in the post-war world it would be useful to create pivotal financial institutions that no country would be able to ignore. This task was accomplished at the conference held at Bretton Woods, New Hampshire, 1-22 July 1944.⁸³ Representatives of forty-four nations, acting on the assumption that no peace could last if economic and financial chaos prevailed, drew up agreements establishing two important institutions : (i) the International Bank for Reconstruction and Development, (The World Bank) and (ii) the International Monetary Fund. Both are now actively functioning as specialized agencies of the United Nations.⁸⁴

It was at the Conference at Dumbarton Oaks near Washington, held between August and October 1944, that the United States, Great Britain, the U.S.S.R., and China agreed on a wide range of subjects and tentative proposals were made for the establishment of a general international organization to be known as the United Nations. The purpose of this conference was to provide a scheme for a general international organization which could later be discussed at a full conference of the allied and associated powers. It is only natural that in these proposals the Charter of the U.N.

82. *Geoff Simons*, n. 4, op. cit. p-36.

83. *Ibid*; p-38.

84. *Norman D. Palmer and Howard C. Perkins*, n. 15, op. cit. p-311.

is found in embryo. The Dumbarton Oaks proposals deal with the purposes, principles and membership of the organization ; its principal organs; arrangements for the maintenance of international peace and security; international economic and social cooperation ; and transitional arrangements. It was proposed that the membership of the organization should be open to all peace loving states, and that the organization should have as its principal organs; a General Assembly, a Security Council, an International Court of Justice, and a Secretariat.⁸⁵

In the General Assembly each state was to be represented and have one vote. In the Council it was settled after much discussions that the 'Big Three' and China would be permanent members and France to join them in due course. The Council should also include six others to be elected by the Assembly for two years at a time. On the question of voting it was decided that in the Assembly each member should have a vote. But it was difficult to decide the method of voting in the Security Council. The Conference at Dumbarton Oaks ended without any agreement on the most important question of voting procedure in the Security Council.⁸⁶

At Yalta, the favourite seaside resort on the Black Sea, Churchill, Roosevelt, and Stalin, with their Foreign Ministers and military and civilian advisers met in February 1945, in enormous palaces inherited from Czarist days to work out a compromise on the vexed question of voting. The conference worked on the proposal of the President. Each member of the Security Council, it was decided, should have one vote. On procedural matters

85. *Sunil Sondhi*, n. 1, op. cit. p-10.

86. *Ibid*, p-11. For the detailed discussion of the Dumbarton Oaks Conference, See, Robert C. Hilderbrand," n. 70, op. cit. IVth Chapter, 'Plans and Principles' pp. 85-107, and Appendix, pp. 258-60.

decision should be made by the affirmative vote of seven members and on larger matters concurring vote of all the permanent members would be necessary. This provided the veto and the guarantee for the Soviet Union. At this conference Stalin proposed that all the sixteen constituent Republics of the U.S.S.R. should have separate representation in the U.N. Great Britain and the United States opposed this proposal. But Roosevelt agreed in a private talk with Stalin to support representation for two of them : the Ukrainion and Byelorussion Republics. The Big three finally agreed on the partition of the Reich and Berlin into three zones of occupation. They also agreed on the final destruction of German militarism and on the trial of leading war criminals by a body of victor judges and called for a full scale United Nations Conference to convene in San Francisco on April 25, 1945.⁸⁷

On 12 April 1945 Roosevelt suffered a massive cerebral haemorrhage and was pronounced dead at 3.35 p.m. Central War time. He had died three weeks before the final German Surrender, and two weeks before the formal establishment of the United Nations. His successor, Harry S. Truman, was sworn in, as the 33rd President of the United States, less than four hours after Roosevelt's death. In his first meeting with his Cabinet members Truman added that 'it was what Roosevelt had wanted, and it had to take place if we were going to keep the peace. And that's the first decision I made as President of the United Statets.'⁸⁸

At the invitation of the United States, delegates from nearly 50 nations convened in the San Francisco Opera House on 25 April 1945. This was an epic, though sometimes confusing,

87. *Sir John Wheeler, Bennett and Anthony Nicholas*, n. 74, op. cit, pp. 545-46. See also *Geoff Simons*, n. 14, op. cit. pp. 42-43.

88. *Geoff Simons*; n. 14, op cit. p-44.

conference. The flags of 48 Sovereign States were floodlit against a blue backdrop; while four great columns, symbolising the Four Freedoms, rose from the floor. The delegates accommodated in red plush seats, surrounded the stage. From Washington President Truman wished the Conference well, whereupon the delegates were divided up into four main commission and twelve technical committees, charged with the task of considering 547 amendments to the Dumbarton Oaks proposals. The idea that New international body be called the 'United Nations'—Roosevelt's original wish was accepted by acclamation, and it was decided that China, the first state to suffer aggression in the Second World War, would be the first to sign the Charter of the United Nations.⁸⁹ For two months, in a blaze of publicity, the delegates hammered out the details of the Charter clause by clause. Decisions were taken by vote, a two-thirds majority being necessary, under the eyes of 2,636 newspaper correspondents.⁹⁰

On 26 June 1945 the San Francisco Conference concluded with the signing of the Charter of the United Nations.⁹¹ The United Nations officially come into being on 24 October, 1945. This day observed through out the world as the United Nations Day.⁹² Much thought was naturally given to the location of the seat of U.N.O., viz., Geneva, America, Brussels, Paris, London, Oslo, San Francisco, and New York. The Permanent Headquarters Commission set up by the General Assembly then ruled that New York was one of the best options and decided to establish the

89. *Ibid*, p-44.

90. John Wheeler, Bennett and Anthony Nicholas; n. 74, op. cit. p-549.

91. Geoff Simons, n. 14, p-46.

92. Sunil Sondhi, n. 1, op cit. p-13. For San Francisco Conference, See also Leland M Goodrich and Edvard Hambro, " Charter of the United Nations : Commentary and Documents, World Peace Foundation, Boston, 1949.

Temporary Headquarters in New York city, a decision that virtually guaranteed New York as the final site for the U.N. headquarters. Finally the brothers Rockfeller solved the problem by offering to the United Nations some twenty-six acres of slum and abattoir property in New York on the East side of Manhattan, overlooking Turtle Bay, an act of generosity which was gladly seized upon by the General Assembly as a reason for deciding to house UNO in New York.⁹³

On April 18, 1946, the League Assembly adjourned after taking the necessary steps to terminate existence of the League of Nations and transfer its properties and assets to the United Nations. On August 1, this transfer took place at a simple ceremony in Geneva. Thus, an important and at one time, promising experiment in international co-operation, came formally to an end.⁹⁴

So a new organisation had come into existence. A totally new security system had now been established, very much on the lines the great powers had originally planned.⁹⁵ The purposes of the United Nations are set forth in Article I of its Charter. The Organisation was intended "to be a centre for harmonising the action" of states in maintaining international peace and security, developing "the principle of equal rights and self-determination of peoples", furthering international cooperation in economic, social, cultural and humanitarian matters, and "encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." The basic

93. John Wheeler, Bennet, and Anthony Nicholas, n. 74, op cit. pp. 552-53.

94. Leland M. Goodrich, "From League of Nations to United Nations, in Joel Larus, ed," From Collective Security to Preventive Diplomacy, " Reading in International Organization and the maintenance of peace, John Wiley and Sons, New York, 1965, p-205.

95. Evan Luard, n. 69, op. cit. p-86.

objective was the furtherance of international peace and security—all other objectives were essentially secondary, or rather contributory, to this central objective.⁹⁶

The provisions of the Charter really mark an improvement upon the provisions of the Covenant of the League. They are quite comprehensive and make the Security Council a very powerful organ of the United Nations. The framers of the Charter accepted the principle of collective security and managed to devise detailed measures for the cooperation coercion of the peace-breaking state by the peace-loving states. The noticeable point at this critical stage is that they also took into account the fact that any collective coercion of great power might mean world war. Thus, they stipulated the principle of unanimity among major powers.⁹⁷

96. *Kenneth J. Twitchett*, "The International Drama: The United Nations on the World Stage in *Kenneth J Twitchett*, ed., "The Evolving United Nations : A Prospect for Peace" Europa Publications, London, 1971, p-1. See also, "Everyone's United Nations : A Hand Book on the work of the United Nations", Department of Public Information, Tenth edition, United Nations, New York, June 1986, pp. 39.

97. *J.C. Johari*, n. 57, op. cit. p-285.

CHAPTER II

**CONCEPT OF
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The idea of collective security has excited the minds of both statesmen and scholars for most of this century and the development of the international organisation has been preoccupied with the achievement of collective security to such an extent that one scholar was moved to describe the relationship between them in these words : "The twentieth century hope that international organisations might serve to prevent war, or, failing that, to defend states subjected to armed attack in defiance of organised efforts to maintain the peace, has been epitomized in the concept of collective security."¹ This anti-war orientation² underlying the efforts to construct international organisations was especially apparent at the end of World War I, by which time most governments were appalled by the destructiveness of modern warfare and disillusioned with the apparent inability of military alliances and the entire "balance of power system" to protect their security and prevent war. Thus, the League of Nations was created in 1919 to institutionalize the ideals of peace and stability and to replace the discredited anarchic system that had hitherto existed.

Many proponents of the League clearly viewed it as the international community's salvation, as nothing less than the solution to the interminable problem of international violence. However, as Ernst B. Hass has noted, inherent in this conception was a fatal flaw : "Ever since its inception in 1919, international organisation somehow has been expected to operate above and

1. Inis L. Claude, Jr., *Swords into Plowshares : The problems of progress of International organisation*, 4th ed. Random House, New York, 1971 p. 245.

2. *Ibid.*, p. 216.

beyond politics."³ It was assumed that the new system would automatically operate to prevent or terminate conflicts. By bringing the resources of all members of the international system to bear against an aggressor, it would assure that no aggression succeeded. In short, the belief was widely shared that the establishment of League of Nations would "go down in history as the date of the birth of the new world."⁴

In linking the nature of international security politics to the activities and successes of collective security organizations, the collective security theory posits that it is the character of security coalitions among their memberships and the allegiance of conflicting parties to these coalitions that largely govern not only an organization's response to a conflict but also the conflict's outcome. Other factors such as the magnitude of a military encounter, the type of issue involved, and the use of particular diplomatic strategies in managing the conflict also, of course have an impact.⁵ However, the term 'international security' is therefore used here to mean something distinct from the familiar concept of collective security or from idealist's hope of an international agency able to defend states against their enemies.⁶ The application of the theory to the history of modern collective

3. Ernst B. Hass, "Types of Collective Security : An Examination of Operational Concepts," *American Political Science Review* LIX March 1955, p. 40.

4. M. Leon Bourgeois, First Chairman of the League Council, in Joel Larus ; ed., "From Collective Security to Preventive Diplomacy ; Reading in International Organisation and the maintenance of peace," John Wiley and Sons, New York, 1965, p. 276.

5. Mark, W. Zacher, "International Conflicts and Collective Security, 1946-77," *The United Nations Organisation of American States, Organisation of African Unity and Arab League*, Praeger Publishers, New York, 1979 p. 6.

6. Leonard Beaton, "The Reform of Power : A Proposal for an International Security System". Chatto and Windus Ltd., London, 1972 p. 17.

security systems can yield valuable insights but cannot, of course, account for the entire and very complex reality of international security politics.

There are two basic types of international security systems, consensual and competitive. Both, the general policies of states and their attitudes toward particular types of interstate conflicts differ in these two types of systems or coalition configurations.⁷ In a consensual system, all or almost all members oppose the use of force for settling international differences.⁸ In a competitive system or configuration, on the other hand, all or at least some important members regard the use of force as legitimate or desirable under certain conditions. International security systems can in fact, include both consensual and competitive elements simultaneously. On certain issues (for example, territorial revision) members may agree that the use of force is illegitimate, but with respect to other issues (for example, "national liberation") they may accept the use of violence. While modern international security systems have been generally competitive, it is possible to identify certain regional political systems that have had strong consensual components.⁹

In a *Consensual Security System*, each member will judge that a failure to oppose an aggression will increase the chances of repeated military transgression. Also, each will fear that a failure to protect another state may lead that state and others to form limited membership military defence groupings-thus undermining the foundations of the consensual system. Because of their general commitment to protect the security of all members, it is the mere threat or act of aggression, and not the particular policies of the

7. Joel Larus, no. 4, op. cit., p. 305.

8. Inis L. Claude, n. 1, op. cit. p. 247.

9. Mark, W. Zacher, n. 5, pp. 9-10.

states involved, that 'triggers' their opposition to the aggressing state. As will be explained below, the situation is different in a competitive system, where certain characteristics of the aggressing and victim parties determine the policy responses of other member states.

In a *Competitive Security System*, at least some important members accept the legitimacy or desirability of using armed force against other states for certain purposes, and therefore many of them will tend to form security groupings or coalitions. The purposes of the groupings are to use force against other states that control values they covert and/or to protect themselves against attacks by certain other countries. Some very important, members of these competitive coalitions perceive that their success in realizing goals is dependent on their relative strength vis-a-vis each others ; and therefore they will seek to (i) prevent their own members from leaving the coalition ; (ii) encourage members of rival coalitions to leave theirs ; (iii) prevent nonaligned states from joining a rival coalition, and (iv) encourage nonaligned states to join theirs. While nonaligned states in a competitive system do not engage in formal military collaboration with each other, they are interested in preventing the major groupings from coercing other nonaligned countries into joining their coalitions, since the success of such endeavours could encourage comparable actions against other nonaligned states. Also, they oppose attempts by the major coalitions to prevent their members from adopting a policy of non-alignment.¹⁰

There are also a number of general state policies concerning conflict management that are relevant to the politics of collective

10. Ibid, pp 10-11, and see in particular, Hans J. Morgenthau, "Politics among Nations : The struggle for power and peace," 4th ed. Alfred A. Knoff, New York 1967 pts. I and II.

security organizations. First, states will not support the intervention of any collective security organization in a conflict if they support the aggression or are indifferent regarding it, since obviously the purpose of such bodies is the curtailment of such aggression. Second, states will tend not to back organizational involvement in those cases where they oppose an aggressor but are also concerned that public condemnation of its action might encourage its collaboration with a rival coalition. Third, when wars and crises occur between members of a single grouping (regardless of whether it is a major security coalition or a nonaligned grouping), other members of that grouping will want to exclude the participation of members of other coalitions from the conflict's management, since, this would provide the latter with opportunities for encouraging one of the conflicting parties to reduce or terminate its alliance ties by offering it diplomatic support. Their preference will be to manage such conflicts within the framework of the coalition itself or in an organisation in which their members predominate."¹¹

Projects for peace were no novelty ; they had existed ever since men fought wars. What was new in the 20th century, was the urgency of the problem. The innovations that had taken place in the technique of war had demonstrated that if wars continued to plague mankind, there was the all frightful possibility of actually extinguishing the human race. In the present age, a world organization to smooth out conflicts among nations and to save mankind from the scourge war was not only desirable but necessary. The League of Nations and the United Nations emerged from the chaos and despair of the two world wars, respectively, and both stemmed from this pressing need of time. Both the global organizations were built around the idea of collective security.

11. *Ibid.*, pp 12-13.

Other objectives also figured prominently, but the hope of establishing a successful collective security system was the primary motivating force.¹²

The concept of collective security found in the Charter was not an innovation. In the initial stage it developed with the human concern for security. At that stage for the purpose of security, groups gave birth to the institution of state. Later small states developed the concept of federal state system and that of confederation of independent states with the view of collective security. Later, it found its silent entry in the international field with the development of community feeling, international interdependence and international conflicts. First it found expression in defence alliances of two or more states, then developed into regional basis and balance of power system and lastly with the development of international institutions in its universal application, under the concept of collective security the security of all states was guaranteed by all states and when there is aggression against one it would be defended by all collectively and on behalf of all. All states would participate in the decision making and enforcement action against the aggressor. In modern days the concept is based on indivisibility of peace and security of all, and on the general prohibition of the right of states to use force for the enforcement of their rights and the law. The enforcement of peace and justice is the sphere of international community at large. The community is responsible for the maintenance of international peace and security.¹³

The idea of collective security is at least as old as the

12. K.P. Saksena, "The United nations and Collective Security." D.K. Publishing House, New Delhi, 1974 p. 4.

13. Dr. Subhas C. Khare, "Use of force under United Nations Charter," Metropolitan Book Co. (P) Ltd. New Delhi, India, 1985, p. 131.

Amphictyonic League, by which Greek city-states assumed the obligation not to destroy any city of the Amphictyons "nor cut off their streams, in war or peace, and if any should do so, they could march against him, and destroy his cities, and should any illage the property of god, or be privy to or plan anything against what was in his temple at Delphi, they would take vengeance against him with hand and foot, and all their might."¹⁴ While the emphasis here is on protecting a common religious area bordered by all, the core of plan required a group of states to collectively punish any member that violated an important security norm. This collective commitment of a group to hold members accountable for the maintenance of an internal security norm is the essence of collective security. The focus on internal regulation distinguishes it from an alliance that is organised for the purpose of collectively reducing threats that originate outside the membership.

Over the ensuing three thousand years there have been countless proposals for collective security system and dozens of attempts to put specific plans into effect. The power and philosophy of the catholic church made the middle ages a particularly fertile period for both. In Germany and especially France, religious councils and synods passed laws obligating princes and clerics to oppose war by forceful means and placed combined forces under religious leadership.¹⁵ This concept of collective security has found sufficient expression in the works of early writers as Pirairi Dubious (*De Recuprations Terai Sanctae*, 1606) William Pann (*Present and future peace of Europe*, 1693) and St. Pierre, (*Project to bring Perpetual peace in Europe*, 1713).¹⁶

4. Elizabeth, York, "Leagues of Nations" Swarthmore Press, London 1919 p. 5.

5. Stefan Passony, "Peace Enforcement" Yale Law Journal, Vol. 55, 1946, p. 910.

6. Dr. Subhas. C. Khare, n. 13, op. cit. pp. 131-132.

On a more abstract level, Dante and Dubois debated the relative merits of a universal monarchy and a congress of princes to keep the peace in Europe.¹⁷

The *adumbration* of collective security can be found in old treaties and in the writings of several pacifist thinkers, more clearly in the ones dating from the 17th Century. To cite a few instances, the Treaty of Westphalia (1648) obligated all its signatories "to defend and protect all and every article of the peace against anyone..... and to join the insured party, and assist him with counsel and force to repel the injury."¹⁸ The Treaty of Osnabruck, also of the 17th century, provided that "all and each of the contracting parties shall be held to defend and maintain all and each of the disposition of this peace against whomsoever it may be."¹⁹ In 1693, William Penn outlined a peace plan for Europe that was based on an international tribunal and of European sovereigns whose decisions would be enforced collectively.²⁰ A few years later in 1713, the French philosopher, Abbe de Saint-Pierre published his "Project for Perpetual Peace", which called for a union of states that would work along the same lines²¹ that an alliance of all states which should guarantee the territory of all its members....and oppose by arms any power that should refuse to give effects to its judgment."²² Any state that attempted to use force outside the union or refused to execute a regulation of the council would be declared an enemy until it

17. George W. Downs, ed." Collective Security beyond the Cold War," The University of Michigan Press, 1997, p. 2.

18. Fredrick L. Schuman, "The Commonwealth of Man", Alfred Knoff, New York, 1952 p. 353.

19. George A. Finch, "The Sources of Modern International Law," Carnegie Endowment for International Peace, Washington D.C. 1937 p. 40.

20. George W. Downs, ed. n. 17, p. 3.

21. *Ibid.*, p. 3

22. Cited in Fredrick L. Schuman, n. 18, p. 348.

either disarmed or complied. Leibnitz thought the scheme was workable, but Frederick II of Prussia was scornful. "The thing is most practicable, for its success all that is lacking is the consent of Europe and a few similar trifles."²³

Rousseau did not think much of the plan either. His famous essay "judgment on Saint-Pierre's Project for Perpetual Peace (1761) anticipated many of the critiques of collective security that would be raised over the course of the next three centuries. While acknowledging that Saint-Pierre's project would benefit the people of Europe, he argued that their desires were basically irrelevant. Monarchs were interested in extending their power, not in providing what would now be called public goods or collective benefits." Though the advantages resulting to commerce from a general and lasting peace are in themselves indisputable, still, being common to all states, they will be appreciated by none. For such advantages make themselves felt only by contrast, and he who wishes to increase his relative power is bound to seek only such gains as are exclusive." Worse still, ministers of states needed perpetual war to justify their existence and afford them opportunities to gain private profit through the manipulation of markets. A christian confederation might eventually evolve, Rousseau concluded, but revolution and force, not logic, would be the instruments of its establishment."²⁴

Theorizing about collective security yielded to natural experiment when the Congress of Vienna created the Concert of Europe.²⁵ The Congress of Vienna in 1815 represents the first modern attempt at organizing states to preserve the peace. It is

23. Stefan, Passoney, n. 15, op. cit. p. 916.

24. Jean-Jacques Rousseau (1761), "Judgment on Saint-Pierre's Project for Perpetual Peace." in M.G. Forsyth, ed, 'The theory of International Relations', Atherton Press, New York, 1970.

25. George W. Downs, ed." n. 17, op. cit. p. 3.

the precursor to twentieth century organizations. After the defeat of the French emperor Napoleon Bonaparte by Russia, Prussia, Great Britain and Austria, the victors sponsored a conference to determine the shape of new Europe. Working with weaker states, they sought to achieve an ongoing distribution of power that would deter future aggression and prevent the rise of another conqueror of Napoleonic magnitude. By raising the stakes of aggression through co-ordinated foreign policies, the Congress of Vienna wished to ensure against its recurrence. The interests of victorious states became those of the international system.²⁶

The sponsors of the conference agreed to meet periodically, but the Congress System was too visionary for the real politik world in which states sought to maximize their power. It was replaced by the 'Concert of Europe', a less-organized but more durable forum for deliberations by major powers. The Concert limited its attention to problems of international significance as they arose (as opposed to the more prevention oriented Congress) and met seventeen times from 1830 to 1884. For instance, during an 1884 meeting that continued to have repercussions, the Concert met to divide colonial rights to Africa among vying European imperialist powers after the race to acquire territories threatened to get out of hand. The Congress and Concert opened-up diplomatic channels among states and established the beginnings of an executive council somewhat akin to the UN Security Council.²⁷

The contribution of the Concert experience to resolving the debate between advocates of collective security such as the Abbe de Saint - Pierre and critics like Rousseau is even less clear. Apart

26. Thomas G. Weiss, David P. Forsythe, and Roger A Coate, ed." The United Nations and Changing World Politics," Westview Press, USA, 1994, pp 18-19.

27. *Ibid*, p. 19.

from the fact that is represented only in one case, the Concert's design bore little resemblance to anything envisioned by Saint-Pierre. It was organised as a loose consultative agreement, not a legislative assembly, it had no voting rules, and its mandate was to inspire diplomacy, not punish members that had violated specific norms.²⁸

The Hague conferences in 1899 and 1907 sought to regulate the laws of war. Their deliberations were more inclusive than the Concert's and included some states from other continents. Delegates representing twenty-six states, of which five were non-European, attended the first conference. In 1907 this number increased to forty-four states, including twenty-four non-European ones. The Hague conferences represent the first example of gathering diverse countries into an international security system aspiring to universal membership, as the United Nations was to do decades later. The Hague conferences spelled out the framework for the Permanent Court of Arbitration as well as rules governing the conduct of war. They also served as a step to universalize debates on international issues.²⁹

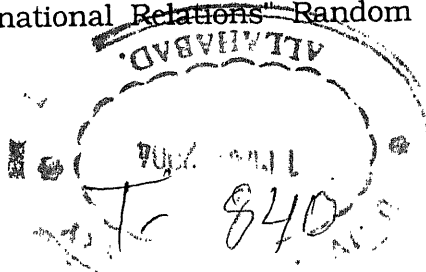
But such plans were lonely haphazard. The elaboration of the collective security idea and its widespread popularity was distinctly a phenomenon of the opening decades of the twentieth century.³⁰ In the Scandinavian countries, the Netherlands, France and Great Britain, a variety of peace enforcement plans were offered.³¹

28. George W. Downs, ed. n. 17, p. 4.

29. The codification of these rules began and has continued under the auspices of the International Committee of the Red Cross. See David P. Farsythe, "Humanitarian Politics : The International Committee of the Red cross," Johns Hopkins Univ. Press, Baltimore, 1977 ; and the Geneva Conventions of August 12, 1949, and Protocols additional to the Geneva Conventions of 12 August 1949, Geneva, ICRC, 1989.

30. Inis L. Claude, Jr., "Power and International Relations" Random House, New York, 1962, p. 107.

31. K.P. Saksena, n. 12, op. cit. p. 6.



Theodore Roosevelt declared in 1902 that it was "incumbent on all civilized and orderly powers to insist on the proper policing of the world." In 1910, he said in his nobel peace prize address : "It would be a master stroke if those great powers honestly bent on peace would form a League of peace, not only to keep the peace among themselves, but to prevent, by force if necessary, it being broken by others." This idea was explained by him with vigour during the first world war and he appealed to nations to work for a device by which aggression could be checked by the combined forces of all. C. Van vollenhoven, a Dutch Scholar, had already emphasized in 1910 the need for an international enforcement mechanism and this idea was blessed with the approval of the U.S. Congress.³² During World War I, a broadly international association, "the Organization Centrale Pour Une Paise Durable" functioned at the Hague as the focal point for groups interested in promoting the idea of collective security. In the United States, the League to enforce peace attracted a number of prominent intellectual and political figures who worked enthusiastically to uphold peace by all possible means including force.³³

The concern for **universal collective security** developed with the growing interdependence of the world community upon one another due to rapid industrialization, development of modern means of communication, weaponry and all kinds of humanitarian projects. The occurrence of the World War I with its destructive effects gave rise to the idea of war as a subject of international concern and gave fillip to the idea of creating institutional device for affecting collective security, and methods of regulating the use of force by states in their relations. The call for creating such an international organization based on collective security for enforcing

32. Mahendra Kumar, "Theoretical Aspects of International Politics", Shiv Lal Agarwal and Company. Agra, 1981, p. 406.

33. Ruhl J. Bartlett, "The League to Enforce Peace," University of North Carolina, Chapel Hill, 1944, pp 3-47.

peace was given to the world by President Woodrow Wilson of United States of America in his address on May 27, 1916 before the League to Enforce Peace.³⁴ He propounded that "the world is now upon the eve of great consummation when some common force will be brought into existence.....when coercion will be summoned not to the service of political ambition or selfish hostility, but to the service of 'common order', a 'common justice', and a 'common peace'." President Woodrow Wilson's conception of collective security "posited a system of international organization in which all nations would recognize an obligation to combine against any nation guilty of aggression as determined by impartial procedures and laws."³⁵ He also emphasized that creating of a limited collective security organization through alliances is not desirable as it creates 'balance of power' competition ; instead, overwhelming group of nations big and small should co-operate in the common cause of guaranteeing security and justice to all as trustee of peace of the world.³⁶

The Wilsonian concept of collective security purported to solve the dilemma. It postulated a preponderance which would be available to everybody for defensive purposes, but to nobody for aggressive purposes. Peace would henceforth be based upon "a force....so much greater than the force of any.....nation or.....alliance hitherto formed or projected that no nation, no probable combination of nations could face or withstand it." It is obvious that a collective security system, as envisaged by Wilson and his contemporaries, made singularly stringent demands upon the

34. Dr. Subhas C. Khare, n. 13, op. cit. p. 132.

35. Robert E. Osgood, "Woodrow Wilson, Collective Security and the lessons of History, in "Earl Latham, ed., The philosophy and policies of Woodrow Wilson University of Chicago Press, Chicago 1958, p. 189.

36. Hartley Notter, "Origins of the Foreign policy of Woodrow Wilson : Hopkins Press, Baltimore 1937, pp 328-29.

nations of the world. He rightly realized that socio-economic forces had already made the whole world "a single viccinage" and stressed the need of "a new and more wholesome diplomacy." But his concept of collective security was a theoretical solution offered for a practical problem. Its practical applicability was needed to measure its theoretical adequacy, and the League of Nations experience provided the first pragmatic exploration of the collective security theory.³⁷

Thus the idea of collective security through an international organization as developed by common peace programme after the first world war transformed into a reality with the creation of international organization in League of Nations. The Covenant of the League of Nations contained the constitution of the international organization and the global collective security system was adopted by the peace conference. The international organization so created was a loose association of states based on two fold objectives (i) of preserving international peace and security and (ii) promoting international co-operation. The central idea of the global system founded in the Covenant of the League of Nations of June 28, 1919 was collective security though in practice it proved to be a loose system of collective security.³⁸

The League Covenant incorporated, in article 10, a classic statement of the collective security concept : the obligation of every state "to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League."³⁹ The principle of collective security was added to the formula in Article 11 through the declaration that : "any war or threat of war, whether immediately affecting any of

37. K.P. Saksena, n. 12, op. cit. pp 9-10.

38. Dr. Subhas C. Khare, n. 13, op. cit. p. 133.

39. Article 10 of the Covenant of the League of Nations.

the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of Nations.⁴⁰ In order to provide "teeth" to enforce the general principles of collective security, Article 16 provided for sanctions. The members accepted the principle that resort to war by a state should be regarded *ipso facto* as an "act of war" against them all. In response to such an act, they undertook to impose immediately a strict embargo on all normal personal, commercial and financial relations with the offending state. These weapons of economic strangulation were considered truly formidable, as a last resort, Article 16 also provided for the possibility of 'collective military sanctions' to be initiated on the recommendation of the Council.⁴¹ Article 17 provided that collective actions could also be taken against non members of the League.⁴² By providing these coercive measures, the Covenant did not so much stand for not changing the status quo as for not using violence ; it gave formal expression to the conceptual relationship between peaceful change and collective security by authorizing, in Article 19, the Assembly to consider demands for altering the status quo.⁴³

The Covenant of the League thus possessed all the essential policy perspective of a collective security system as under :

- (a) Restrictions on the right of states to go to war.
- (b) Pacific settlement of disputes to avoid war.
- (c) Universality of the membership.

40. Article 11 of the Covenant of the League of Nations.

41. Article 16 of the Covenant of the League of Nations.

42. Article 17 of the Covenant of the League of Nations.

43. Article 19 of the Covenant of the League of Nations, and see also for the extensive documentation of the League Covenant reproduced in David H. Miller, "The Drafting of the Covenant," G.P. Putnam, New York, 1928 Vol. II.

- (d) System institutionalized central authority guaranteeing peace and security and established collective mechanism to act in automation against aggression with impartiality.
- (e) Collective deterrence on sanction expectations. It implies two conditions : (1) National disarmament and preponderance of international force and (ii) collective sanctions must be enforced after impartial determination of guilt by the organization.⁴⁴

However, the Covenant was far from a perfect design for collective security. A searching analysis of the relevant provisions would show that war could still be waged without violating the Covenant ; the obligations of Member - states, under Article 10 and 16, were left vague, the authority of the League over member-nations spelt impotency, and in the case of aggression, there was no adequate machinery capable of deciding quickly and acting promptly.⁴⁵

The experience of the League reveals a reluctance by the members to adhere to the collective security obligations of the Covenant. Instead of total and automatic application of economic sanctions, the obligations were treated as selective and voluntary for each member in each situation. In 1921, the Assembly adopted resolutions that declared that for each state the application of economic sanctions under Article 16 was optional, not mandatory. Loopholes were discovered in the Covenant formula for collective security and taken advantage of to avoid inconvenient enforcement obligations.⁴⁶

As an instrument for the development and enforcement of

44. Dr. Subhash C. Khare, n. 13. op. cit. pp 134-135.

45. K.P. Saksena, n. 12, op. cit. p. 11.

46. A. Le Roy Bennett, "International Organizations : Principles and Issues" Prentice-Hall, Inc. 1977, pp 125-126.

collective security, the League of Nations was severely handicapped and indeed virtually impotent from the start. The failure of the United States to join, the rise of the Soviet Union outside the League System, the reluctance of Great Britain to assume international obligations, and later the open defiance of Japan, Italy, and Germany—all these combined to destroy any hopes that the League would be effective in major international crisis. From the beginning, it was not sufficiently broad in membership ; it never included all the great powers, and those which belonged were by no means stout champions of collective security. France and the Soviet Union may appear to be exceptions to this judgement ; but France was interested in security against Germany rather than in a genuine and universal security system, and Russia was primarily concerned with security against the rising menace of fascism.⁴⁷

The collective security system was subjected to test after 1930 when the League was caught in 'difficulties'.⁴⁸ The first unfortunate event occurred in 1931 when Japan *raped* Manchuria and in the following years formed a puppet state (Manchukuo) there. When the League Council asked the disputants (China and Japan) to withdraw their troops from the theatre of war, it was ignored by Japan. Subsequently, the Lytton Commission held Japan guilty of the act of aggression. The Japanese government rejected its findings and then left the membership of the League in 1933. It entailed a very bad result.⁴⁹

In the history of the League, the most extensive effort to give

47. Norman D. Palmer and Howard C. Perkins, "International Relations :The world community in transition," Scientific Book Agency, Calcutta, 1976, p. 244.

48. A.P. Walters, "A History of the League of Nations", Oxford University Press, London, 1952, Vol. I, pp 459-60.

49. Ibid., Vol. II, p. 499.

teeth to the Covenant and to make the embryonic provisions for collective security work was made during the Ethiopian Crisis of 1935-36. When Italian forces invaded the independent African State, the matter was immediately brought to the attention of League ; and when Italy refused to suspend hostilities the Council of the League, inspite of Italian protests, voted to impose sanctions against Italy. The Italo-Ethiopian War thus became the chief test case—indeed, the only real one of the effectiveness of the League's security system.⁵⁰ Fifty League members agreed to an embargo on arms and on financial aid to Italy and a ban on imports from Italy. Although these measures seriously affected the Italian economy, they did not encompass the most critical sanctions of an embargo on oil, or a blockade of Italian ports, or a denial of access to the sea routes, especially the Suez Canal through which Italy was able to move and supply its invasion forces. The United States continued to trade with Italy except for arms. The League discontinued its economic sanctions in the summer of 1936 at a time when Italy's economic health was at a critical stage. The opportunity to prove the effectiveness of economic sanctions was missed because of inadequate measures applied for too short a time span. Behind the failure of methods was a failure of rational will on the part of League members and non-members.⁵¹

Finally, the aggressive moves of Germany under Hitler played their own part in the destruction of the collective security system. Neither Britain nor France could check the dangerous move of the dictator of Berlin when he left the League in 1933, introduced conscription and remilitarised the Rhineland in 1935, abrogated the Locarno agreements in 1936, occupied Austria and then devoured Czechoslovakia in 1936 and, finally, attacked Poland in

50. Norman D. Palmer and Howard C. Perkins, n. 47, op. cit. p. 245.

51. A. Le Roy Bennett, n. 46 op. cit. p. 126.

1939. Likewise, when Mussolini and Hitler openly supported the revolt of Gen. Franco in Spain in 1938, both Britain and France incapacitated the League by sticking to the course of 'non-intervention'. All these tragic developments demonstrated that now the idea of collective security "seemed to have been but a dream from which men now awakened to the old world of bilateral diplomacy and power politics."⁵²

The League to a certain extent concerned itself with all these aspects. Morgenthau commenting on the collective security system of the League has stated that the Covenant and its practice show that it was not a project design but an abortive attempt to translate collective security idea into a working collective security system though adopted but not accepted, vaguely institutionalized without serious prospects for implementation. The idea that any aggression in the world is a concern of the whole international community had been adopted but not observed in practice.⁵³

The League experience was an abortive attempt to translate the collective security idea into a working system. The signatory states to the Covenant proclaimed their adherence to the principle and then failed to grasp, or shied away from, the implications of their obligations. The history of the League is "a curious mixture of efforts to enhance and to diminish its suitability for the task of giving effect to the collective security principle."⁵⁴ collective security had been adopted but not accepted ; it had been vaguely institutionalized but without serious prospect of implementation.

The failure of the League system of collective security resulted in the World War II. With the intensification of the war the world

52. F.S. Northedge and F.L. Grieves, "A Hundred Years of International Relations", Duckworth, London, 1971, p. 160.

53. Dr. Subhash C. Khare, n. 13 op. cit. p. 135.

54. Inis L. Claude, Jr., n. 30 op. cit. p. 153.

leaders began to think of having a new world organization for more strong and with more workable collective security system. Work began in this direction with the 'London Declaration' of June 12, 1941 and proceeded in 'Atlantic Charter' of August 1941 and U.N. Declaration of Jan. 1, 1942. Definite shape to the idea of the new organization had begun to grow with the three power Moscow Conference of Oct. 1943. At that time the following three operational concepts for shaping the new world organization for collective security had found currency :

- (i) that organization should be based on the Concept of collective security and all nations should be responsible for peace through out the world (Cardell Hull, U.S. Secretary of State's view) ;
- (ii) that small nations should remain unarmed and to leave the problem of their security to the big four, U.K., U.S., USSR and China i.e. trusteeship under big power policemen (Roosevelt, U.S. President's view) ; Russia supported this view with the modification that joint action for prevention of breach of peace by big four should be based on unanimity ; and
- (iii) that the world security system should be based on regional principle, the new world organization should be based on the foundation of three autonomous regional councils of Asia-Africa, Europe and America (Churchillian view).⁵⁵

Finally when the draft of the new world organization, the U.N. was approved by big five at San Francisco in 1945 and accepted by 51 nations it was the collective security organization in which all these views were incorporated with modifications. An attempt

55. Dr. Subhash C. Khare, n. 13 p. 137.

was made to avoid the deficiencies of the League and to strengthen the institutional arrangement under the new organization.⁵⁶

Collective Security : Definitional premise, Nature and essential implications

Collective Security is a murky term. Not only do definitions differ—that is bound to happen in public debate and scholarly discourse but some directly contradict each other. Some refer to ordinary alliance politics, which promise co-ordinated action for offence, defence, or deterrence, in opposition to rival alliances. The security may be collective for the members of the alliance, but it is focused on a well-defined external threat. In this sense, collective security is the opposite of autonomous self-defence. Others use the term quite differently. They mean co-operation that transcends the age-old system of rival alliances. In this sense, collective security refers to a universal alliance, or (less ambitiously) to an inclusive alliance of great powers, in contrast to balance of power diplomacy. The core meaning of this stringent definition is a coalition of all against one, where the one has breached some basic norm or is a potential hegemon. According to this conventional definition, all security is internal to the alliance.⁵⁷

In the collective security system, 'security' is the end, 'collectivity' is the means, and 'system' is the institution to make the means serve the end. In one phrase, collective security is security of all states, by all states, for all states ; security measures will be taken on behalf of all states and not any particular power or alliance ; every state will be entitled and obliged to participate in the decision making and the enforcement

56. *Ibid*, p. 137.

57. George W. Downs, ed. n. 17 op. cit. p. 113.

action of the system ; the security measures will defend all states without discrimination, against any threats or acts of aggression. In other words, the system of collective security is based on the presumption that peace is indivisible, i.e., security is collective.⁵⁸

The term 'collective security' has too many possible meanings to permit any elaboration of them. But broadly speaking, the rock bottom principle of collective security is that an attack on any one state will be regarded as an attack on all states. Collective Security refers to such a distribution of power in which the overwhelming portion is in the hands of the protectors of peace and order. Thus a potential aggressor would not dare disturb peace ; if he did, he would be crushed. Security is the concern of all states and it will continue to be so until a world federation comes into existence. On the other hand, peace cannot be ensured without adequate provisions for 'national security'. Thus collective security is regarded as an approach to peace. The problem of security is an age-old problem in interstate relations. But the distinctness of collective security as an approach to peace lies in its assertion that the security of a nation is no longer the exclusive concern of that particular nation and that it has now become the concern of international society as a whole. Under the collective security system, all nations take care collectively of the security of each of them as if the security of all of them were in danger. If one nation threatens the security of a second nation, all other nations will take measures on behalf of the threatened nation.⁵⁹

In very simple terms, the term 'collective security' has been defined as "a machinery for joint action in order to prevent or counter any attack against an established international order."⁶⁰

58. M.V. Naidu ; "Collective Security and the United Nations", The Macmillan Company of India Ltd., 1974, p. 15.

59. Mahendra Kumar ; n. 32 op. cit. p. 402.

60. Georg Schwarzenberger : "Power Politics" : Alfred A. Praeger, New York 1951, p. 494.

According to Hans J. Morgenthau, "In a working system of collective security, the problem of security is no longer the concern of the individual nation, to be taken care of by armaments and other elements of national power. Security becomes the concern of all nations, which will take care collectively of the security of each of them as though their own security were at stake. If A threatens B's security, C, D, E, F, G, H, I, J and K will take measures on behalf of B and against A as though A threatened them as well as B, and vice versa. 'One for all and all for one' is the watchword of collective security."⁶¹ Charles B. Marshall's opined that "collective security is a generalized notion of all nations banding together in undertaking a vague obligation to perform unspecified actions in response to hypothetical events brought on by some unidentifiable state."⁶² The principle of collective security," according to the definition of the term provided by Hedley Bull, "implies that international order should rest not on a 'balance of power', but on a preponderance of power wielded by a combination of states acting as the agents of international society as a whole that will deter challenges to the system or deal with them if they occur."⁶³ Similarly, Stanley Hoffman, in a somewhat more pointed definition of the term, has argued that the notion of collective security is one "in which all or most states will come to the rescue of a state that is the victim of an aggression and punish the wrongdoers through sanctions or even force."⁶⁴ The working definition of collective security provided by

61. Hans J. Morgenthau ; "Politics Among Nations", Scientific Book Agency, Calcutta, 1973, pp 407-408.

62. Ernest W. Lefever, ed., "Ethics and United States Foreign Policy", Meridian Books, Cleveland 1957, pp 38-39.

63. Hedley Bull, "The Anarchical Society : A study of order in World Politics Columbia University Press, New York 1977, p. 239.

64. Stanley Hoffman, "Delusions of World Order," New York Review Vol. 39, No. 7 April 9, 1992 p. 38.

Leon Gordenkar and Thomas G. Weiss echoes the definition provided by Hoffman, in that the concept of collective security revolves around the central idea that "governments of all states would join together to prevent any of their number from using coercion to gain advantage over the rest."⁶⁵ In essence, collective security is an arrangement among states in which all promise, in the event any member of the system engages in certain prohibited acts against another member, to come to the latter's assistance. It may, in addition, aim to prevent or punish attacks by non-members on one another, members on non members, and non-members on one of its own members."⁶⁶

Collective Security implies several notions that are very different from the concepts and issues discussed above. In particular, if one goes by Bull's definition, collective security must consist of four essential elements ;

- (1) the exercise of "Preponderance of power"
- (2) by a "combination of states ;
- (3) acting as "agents of international society"
- (4) in order to maintain "international order". In essence, it suggests the idea of the legitimate enforcement of the will of the international community by coercion where necessary against recalcitrant states.⁶⁷

On the basis of definitional premise, certain conceptual imperatives of collective security can be highlighted :⁶⁸

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65. Thomas, G. Weiss, ed ; "Collective Security in a Changing World : Emerging Global Issues," Lynne Rienner Publishers, the Boulders & London, 1993, p. 48.
 66. C.P. Schleicher, "International Relations : Co-operation and Conflict", Prentice-Hall, Engle Wood Cliffs, New Jersey, 1954, p. 315.
 67. Thomas, G. Weiss ; ed. n. 65 op. cit. p. 50.
 68. Anam Jaitly, "International Politics : Major Contemporary Trends, and Issues", Sterling Publishers Pvt. Ltd., New Delhi 1986, pp 224-25.

1. Collective Security implies a situation in which an act of aggression against one state by another becomes a concern for all others. Suppose State A is attacked by State B, then States C, D, E, F, G, H, I, J, K collectively initiate measures on behalf of A against B and deter B to pursue its course of action ;
2. Collective Security is deduced from the experiences of the domestic national life in which the national system employs means, ranging from persuasion to coercion, against anti systematic forces. This it does in accordance with its assessment of the situation on the basis of its legitimacy and legitimized authority. The rationale of the national systematic initiative is extended to the international setting in which a coalition of powers either deter or defeat the aggressive, non-legitimized pursuits of an individual state or a group of states. The system aims at institutionalizing the ephemeral coalitions formed for a period of emergency and finding a permanent coalition of states for maintaining international peace and security ;
3. The seemingly dominant state of armed intervention by all against one or more than one is, in fact, minimized by the provisions of a wide range of policy-options that the Security Council enjoys, from negotiations to military actions.
4. Since collective security envisages a broad spectrum of policy choices ranging from negotiations to actual military action, the system of Security Council embraces techniques of peaceful settlement of international disputes as well.

The fundamental tenets of collective security need to be understood as follows :

Firstly, it is a system of co-operation among states such that an act of aggression by one of its members is an act of aggression against all of its members. As defined in the 1930s, the meaning is "the safety of all by all."⁶⁹ In contrast to alliances and coalitions, which are by nature directed towards an external aggressor, collective security is internally oriented against aggression from one of the members of the system. But because it cannot be known ahead of time who might become the aggressor, collective security entertains a certain ambiguity regarding the development of threats to it.

Secondly, enforcement must have a degree of automaticity among the members of the collective security system. Members of the system must "be willing and able at all times to muster overwhelming strength for collective defence at successive points of conflict."⁷⁰ If not, then member-states that do take action, alone or in combination with other states, act like states in an anarchical balance of power system. Thus, unless there is a higher degree of commitment to the system, it will quickly fall apart.

A third element is some level of commitment to the status quo.⁷¹ That is to say, the members of the system are states, and the vast majority (at least) of such states regard as sufficiently equitable their boundaries and other relationships (for example, trade), so that preponderant force can be mobilized to deter, or

69. Quoted in Richard N. Current, "The United States and 'Collective Security' ; Notes on the History of an idea, "in DE Conde, Alexander, ed "Isolation and Security", Duke University Press, Durham N.C. 1957, p. 45.

70. Kenneth W. Thompson, "Isolationism and Collective Security : The Uses and Limits of Two Theories of International Relations" in *Ibid* ; pp. 175-76.

71. *Ibid.*, p. 175.

reverse, an act of aggression. Collective Security also implies that the members are confident of their definition of aggression, so that all members can agree when aggression by one member has occurred. In international politics, however, such clarity has been rare.

Besides suggesting the inherent characteristics of the theory of collective security, Thompson also tells us about its basic assumptions and requirements. These are :⁷²

First, collective enforcement assumes a *status quo* or situation of peace, on which the nations with predominant strength agree. In practical terms, the peace which a collective system must defend is the territorial status quo existing at the time the system is brought into being. There is nothing in past experience to indicate that all nations, or even a combination sufficiently powerful to defy the rest, will agree on the meaning of a particular *status quo*. Following every war, the defeated powers who feel they have suffered most by the terms of peace come to oppose the established *status quo*. In the aftermath of World War II, however, the question of satisfaction or dissatisfaction with the *status quo* has largely been superseded by an earlier and prior question.

Second, collective security demands that nations subscribing to the *status quo* be willing and able at all times to muster overwhelming strength for collective defence at successive points of conflict. In theory, the supporters of the *status quo* might be capable in particular emergencies of mobilizing effective and decisive power against the single aggressor who sought to defy them, or, by pooling the resources of all the nations in a

72. Kenneth W. Thompson, "Collective Security Re-examined," in *American Political Science Review*, Vol. XLVII, No. 3 September 1953, pp 758-60. Reprinted by Joel Larus, ed., n. 4 op. cit., pp. 285-303.

permanently organized international force, collective enforcement could be made automatic, instantaneous, and preponderant. The former condition, however, is practically impossible of fulfillment, in as much as the threat to the *status quo* comes historically from more than one dissatisfied power or aggressor. The second condition would call for the unprecedented practice of international contingents operating under an international agency empowered to decide conclusively where and how they should be used.

Third, it is essential for collective security in a world of unequal powers that at least the major powers enjoy a minimum of political solidarity and moral commitment.

Roland N. Stromberg opined several basic assumptions upon which this "impalpable something" appears to rest. They appear to be as follows :⁷³

- (i) All international disputes are subject to peaceable, just, satisfactory settlement.
- (ii) Nations are for the most part inclined to peace, not war.
- (iii) The inclination to war is everything : war results only when at least one side is guilty of a deliberately aggressive action.
- (iv) Since wars are always caused by a deliberate aggressor, this must be checked in its first stages if it will lead on to ever greater aggression ; the incipient criminal will certainly become a hardened one if not caught in time.
- (v) As an inference from (iii) and (iv), all states have an

73. Roland N. Stromberg, "The Idea of Collective Security". *Journal of the History of Ideas*, Vol. XVII, No. 2 April 1956, pp 250-263 Reprinted by Joel Larus, ed., *Ibid*, pp. 273-84, p. 77.

obvious stake in a war no matter where it may occur, and will, if they understand their interests properly, join in helping to suppress it.

According to Hans. J. Morgenthau, the logic of collective security is flawless, provided it can be made to work under the conditions prevailing on the international scene. For collective security to operate as a device for the prevention of war, three assumptions must be fulfilled :

- (1) the collective system must be able to muster at all times such overwhelming strength against any potential aggressor or coalition of aggressors that the latter would never dare to challenge the order defended by the collective security system ;
- (2) at least those nations whose combined strength would meet the requirement under (i) must have the same conception of security which they are supposed to defend ;
- (3) those nations must be willing to subordinate their conflicting political interests to the common good defined in terms of the collective defense of all member states.⁷⁴

A.F.K. Organski has stated that the idea of collective security rests upon five assumptions that must prove to be correct if the idea is to work out in practice. They are :

1. In any armed combat, all nations will agree on which combatant is the aggressor. What's more, they will reach this agreement immediately, since rapid and united action is necessary if aggression is to be brought to a halt before extensive damage is done.
2. All nations are equally interested in stopping aggression

74. Hans J. Morgenthau, n. 61 op. cit., p. 408.

from whatever source it comes. Preventing aggression is a value which overrides all others in international relations. Neither friendship nor economic advantage will stand in the way of action against an aggressor.

3. All nations are equally free and able to join in action against an aggressor.
4. The combined power of the collectivity, i.e., of all the nations in the world except the aggressor, will be great enough to overwhelm the aggressor.
5. Knowing that overwhelming power stands ready to be used against it, an aggressor nation will either sheathe its sword or go down in defeat.⁷⁵

Organski believes that because only the last two requisites can ever be met in practice, collective security is a 'will-o-the-wisp'. *Claude* suggests that because the ideal requisites have not been met faithfully either in international practice or in the norms and procedures enshrined in the U.N. Charter, there is no real collective security but simply a rechristened balance of power system.⁷⁶

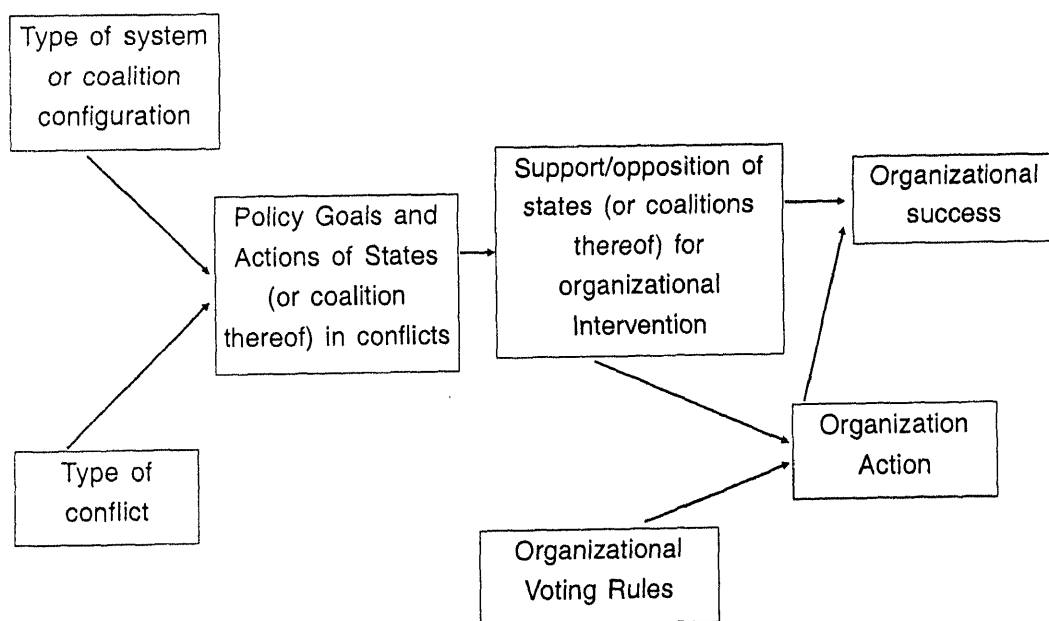
It all boils down to this point that the basic purpose of collective security is to prevent the growth of a formidable conflict, or, failing that, to protect the intended victim by means of collective action of the peace-loving members of the international community. The essence of the whole idea is "a mutual insurance contract among the states. Each state undertakes to guarantee the security of all the others, and for this premium presumably

75. A.F.K. *Organski*, "World Politics," Alfred A. Knopf, New York 1958, p. 373.

76. Quoted in ERNST B. HAAS, "Collective Security and the Future International System", in Richard A. Falk and Cyril E. Black ; ed." *The Future of International Legal order : Trends and Patterns*," Vol. I Princeton University Press, Princeton, New Jersey, 1969, p. 258.

receives coverage for its own security through the commitments made by the others.⁷⁷ One may say that such an attempt of the peace-loving states amounts to a war against the aggressor, but the correct interpretation is that it is a war against an aggressor so as to restore the conditions of peace. As such, it is not a war in the strict sense of the term, it may be described as 'police action'. 'The temptation, or yielding to temptation, to employ force as an instrument of national policy will be deterred or frustrated by the overwhelming power of the 'peace loving members' acting on behalf of the security community to protect the innocent. That is not war, but police action, similar to law enforcement within an orderly domestic society."⁷⁸

MODEL OF A THEORY OF COLLECTIVE SECURITY



77. P.E. Jacob and S.L. Atherton, "The Dynamics of International Organisation : The Dorsey Press, Home Wood Illinois 1965, p. 53.

78. C.P. Schleicher : n. 66 op. cit., p. 316.

Figure 1 Portrays the entire structure of the theory of collective security. Mentioned in Mark, W. Zacher "International Conflicts and Collective Security, "1946-77 : The United Nations Organization of American States, Organisation of African Unity and Arab League, Praeger Publishers, Praeger Special Studies, New York, London, Sydney, Toronto, 1979 p. 16.

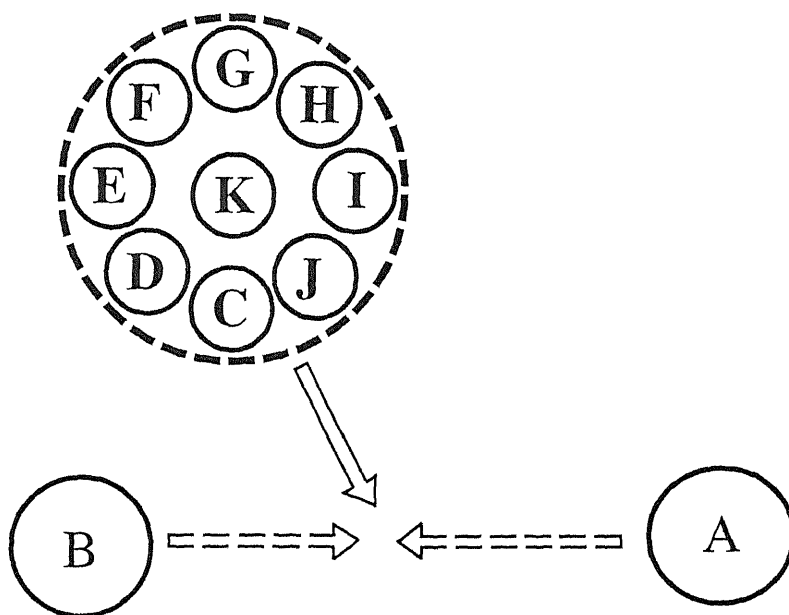


Fig. 2 The Ideal of Collective Security

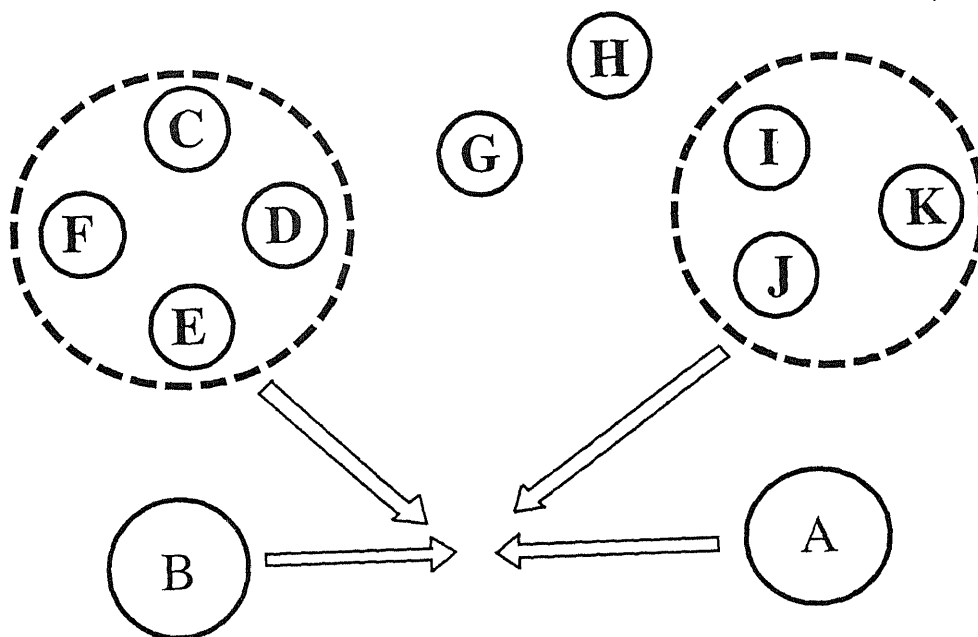


Fig : 3, The reality of Collective Security

The attempt to put collective security into effect under such conditions which are, as we know, the only conditions under which it can be put into effect-will not preserve peace, but will make war inevitable. And not only will it make war inevitable, it will also make localised wars impossible and thus make war universal.

For, under the regime of collective security as it actually would work under contemporary conditions, if A attacks B, then C, D, E, and F, might honor their collective obligations and come to the aid of B, while G and H might try to stand aside and I.J. and K might support A's aggression. Were there no system of collective security, A might attack B with whatever consequences that might have for A and B, with no other nations being involved in the war. Under a system of collective security operating under less than ideal conditions, war between A and B, or between any other two nations any-where in the world, of necessity evokes the risk of war among all or at best most nations of the world.⁷⁹

Under the assumptions of collective security, any war anywhere in the world, then, is potentially a world war. Thus a device intent upon making war impossible ends by making war universal. Instead of preserving peace between two nations, collective security, as it must actually operate in the contemporary world, is bound to destroy peace among all nations.⁸⁰

The implementation of the principle of collective security may assume different forms keeping which in view some theories have been pinpointed as.⁸¹

1. The ideal theory of collective security (as given by Organski) rests on five assumptions. First, in any armed conflict, all nations will agree on which combatant is the

79. Hans. J. Morgenthau, n. 61 op. cit. p. 411-12 Fig. 2 and 3 mentioned on the same pages.

80. Ibid, p. 412.

81. J.C. Johari "International Relations and Politics : Theoretical Perspective Sterling Publishers Private Ltd., New Delhi, 1985., pp 268-69. Also see B.N. Mehrish : "International Organisations : Structures and Processes Delhi, Visual Publications, 1976. pp 130-31. and W.N. Hogan, "International Conflict and Collective Security : The Principle of concern in International Organisation University of Kentucky Press, Kentucky 1955, p. 1.

aggressor. Thus, rapid and united action will follow against the aggressor. Second, all nations are equally interested in stopping aggression from whatever source it comes. Third, all nations are equally free and able to join in action against the aggressor. Fourth, combined power of collectivity, i.e., of all the peace loving states of the world should be mobilised against the aggressor. Last, an overwhelming power should stand ready to be used against the aggressor.

2. The diplomatic theory of collective security defines the norms, procedures and aims in terms of the consensus among the countries. Collective Security is thus a united concert of the major powers. Modern attempts to deal with the problems of war by means of collective security represent an alliance upon the principle of concern in international relations. This principle may be defined as a recognition that conflict among the members of a group affects the entire group and that a unilateral resort to violence against any member constitutes an offence against all members. It involves the idea of organisation to preserve peace.
3. The operational theory of collective security signifies the role of the bargaining process involving other issues as well as in this important task. It lays emphasis on international distribution of power and convergence of widely conflicting private interests.

Though one may pinpoint some underlying themes of divergence in the three theories briefly given above, it is irrefutable that the whole idea "implies collective measures for dealing with threats to peace."⁸²

82. Norman D. Palmer and Howard, C. Perkins : n. 47 op. cit. p. 241.

It follows that collective security is one of the means for the restoration of peace in the world. As such, it may be distinguished from some other related alternatives. For instance, it is different from the system of alliances. The latter has a very limited application ; it is concerned with the interests of the members of an alliance and not with the fate of the world as a whole. In opposition to this, the former has a higher goal-maintenance of peace in the world. As schleicher observes : "Although regional collective arrangements such as the OAS (Organisation of African States) may be concerned with threats from without, a truly universal collective security can obviously deal only with peace among its members. A collective security system which aspires to universality will emphasise peace within the system. The essential difference between an alliance and a collective security system is that the former is directed against a certain state or states outside the system, whereas collective security is primarily concerned with peace among its own members, all of whom are regarded as innocent until and unless anyone of them is found guilty."⁸³

Sometimes collective security is compared with international peace keeping. But, in reality 'collective security' and 'peace-keeping' are fundamentally different both as concepts and in practice.⁸⁴ Peace Keeping is the deployment of a United Nations presence in the field, hitherto with the consent of all parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-Keeping is a technique that expands the possibilities for both the prevention

83. C.P. Schleicher, n. 66 op. cit, p. 314 See also J.C. Johari, n. 81 op. cit. p. 269.

84. David J. Wluttaker, " United Nations in action", Biddless Ltd. Guildford and Kings, Lynn, England, 1995 p. 27.

of conflict and the making of peace.⁸⁵ Peace-Keeping operations are undertaken only when parties to a conflict agree that UN (or other multinational) observers or peace-keeping forces should be deployed to separate warring states or factions or generally to keep the peace in potentially conflict-prone areas. Often such agreement requires the use of persuasion, sometimes arm-twisting, either by U.N. representatives or by interested great powers. Nonetheless, peace-keeping activities cannot be initiated unless parties to conflicts explicitly agree to the introduction of UN (or multinational observers or other forces).⁸⁶

An enterprise related to peace-keeping that has become quite fashionable in the last one decade is the use of the UN Secretary-General's office for the provision of mediation or good-offices, or "peace-making," in the settlement of regional disputes.⁸⁷ Peace-making according to Boutros Boutros Ghali is 'action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations'.⁸⁸ The specific tools of peacemaking are set out in Article 33 of the Charter. It states that the parties to a dispute should 'seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice'.⁸⁹ 'Peace-making' as it relates to 'peace-keeping' has been defined as 'the negotiation for agreements on disputes,

85. Boutros Boutros Ghali, "An Agenda for the Peace : Report of the Secretary-General pursuant to the statement adopted by the summit meeting of the Security Council on 31 January 1992, "A/47/277-S/24111, 17 June 1992. Published by the Department of Public Information, New York, 1995 p. 45.

86. Thomas, G. Weiss, ed," n. 65 op. cit. p. 48.

87. Ibid, p. 48.

88. Boutros, Boutros Ghali, n. 85 op. cit. p. 11.

89. Art. 33, Chapter VI of the UN Charter.

whereas peace-keeping is the implementation of those agreements.⁹⁰ In the peace-keeper's Handbook peacemaking is described as 'negotiation and mediation'.⁹¹ Perez de Cuellar adds that 'peace-keeping' can only be a palliative if it is not made to serve as a prelude to or accompany, negotiations towards a comprehensive settlement.⁹² Further, noting the importance of peacemaking for peacekeeping, he wrote, 'experience has shown that the mere continuance of a peacekeeping operation does not by itself generate movement towards a settlement.'⁹³ Malitza gives this definition "In this light, war (open conflict) is synonymous with the cessation of all peaceful interactions and their substitution by a violent confrontation. 'Peacekeeping' is the effort to stop that violence and 'peacemaking' is the attempt to restore the severed interactions."⁹⁴ Despite the recent spate of qualified successes that such efforts have achieved with the winding down of the cold war, these efforts cannot be classified as falling within the ambit of collective security. Like peacekeeping operations, these efforts, in the final analysis, are dependent for their success, or even their initiation, on the voluntary acceptance of such good offices by the parties engaged in conflicts. They do not have the coercive sanction of the international community behind them.⁹⁵

'Peace-building' is the third main area of UN activity associated with the peaceful settlements of disputes. Its relation to 'peacekeeping' has received less attention than the link between

90. A.B. Fetherston, "Towards a theory of United Nations Peace-Keeping", Macmillan Press Ltd., Great Britain, 1994, p. 130.

91. International Peace Academy (1984), *Peacekeeper's Handbook*, Pergamon : New York, p. 22.

92. UN Doc, A/43/1, p. 5.

93. UN Doc A/45/1 p. 6.

94. A.B. Fetherston, n. 90 p. 130.

95. Thomas G. Weiss, n. 65 op. cit., p. 48.

'peacemaking' and 'peace-keeping'. But as a means of preventing the recurrence of hostilities, reconstructing economic and social interactions and facilitating resolution, 'peacebuilding' is crucial.⁹⁶ Boutros Boutros Ghali points to the importance of post-conflict peace-building, which he defines as, 'action to identify and support structures which will tend to strengthen and elsewhere solidify peace in order to avoid a relapse into conflict'.⁹⁷ Boutros Boutros Ghali notes that peacebuilding amounts to 'rebuilding the institutions and infrastructures of nations torn by civil war and strife ; building bonds of peaceful mutual benefit among nations formally at war'.⁹⁸ Malitza describes 'peace building' as 'the deliberate and systematic buildup of interactions, dense and durable, initiating a state in which the resumption of conflict would be improbable.' Finally, Coate and Puchala say, 'peacebuilding policies prescribe action aimed at eliminating the social and economic sources of tension that are among the causes of war.' The UN's peace buildings activity is carried out by agencies within the system such as World Food Programme (WFP), UN Development Programme (UNDP), and the UN Children's Fund (UNICEF) and by specialized agencies like the World Health Organization (WHO) and UN Educational, Scientific and Cultural Organization (UNESCO). In addition, a large number of non-governmental organizations are engaged in 'peacebuilding' activities, often alongside Peace-Keeping missions.⁹⁹

'Collective Security' and 'peaceful settlement of international disputes' have been commonly regarded as the most promising of all the approaches to peace. The first seeks to confront would be aggressors with the concerted power of states determined to keep

96. A.B. Fetherston, n. 90 op. cit, p. 131.

97. Boutros Boutros Ghali, 1992 n. 85 op. cit. p. 11.

98. *Ibid.* p. 8.

99. A.B. Fetherston, n. 90 op. cit. p. 132.

the peace ; it involves a commitment to go to war if necessary, recognizing that the immediate peace is thereby jeopardized but assuming that future peace will be more secure if it has been clearly demonstrated that crime among nations does not pay. The peaceful settlement of disputes on the other hand, aims at the prevention of war by the use of non-coercive or at least non-violent procedures. Some authorities hold that collective security includes measures for peaceful settlement ; others, conversely, that the machinery for peaceful settlement, if it is so adequate, must include regional arrangements and even broader agreements for collective security and defense. The founders of the United Nations incorporated elaborate provisions for both approaches into the Charter. Chapter VI (Articles 33-38) deals with the Pacific Settlement of Disputes and Chapter VII (Articles 39-51) with Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression. This juxta position cannot be explained as a mere coincidence. Apparently the framers of the Charter believed the two approaches to the prevention of war to be complementary.¹⁰⁰

'Collective Security' has not demonstrated positive correlation with Interdependence. In fact, Interdependence does not necessarily contribute to collective or any other form of security. Interdependence, especially if it is asymmetrical in character (as is most interdependence), is as often the cause of conflict between states and groups of states as it is a contributor to co-operative interstate relationships. Asymmetrical interdependence is a potential contributor to conflict because asymmetries "are most likely to provide sources of influence for actors in their dealings with one another. Less dependent actors can often use the

100. Norman D. Palmer and Howard C. Perkins : n. 47 op. cit. p. 238.

interdependent relationship as a source of power in bargaining over an issue and perhaps to affect other issues." Such asymmetries can, therefore, be the cause for conflict especially if the weaker party feels that it has been pushed too far and its vital interests face the threat of significant erosion, if not outright extinction.¹⁰¹

In the same way, 'collective security system' is different from the system of 'world government'. World Government implies the establishment of a permanent system in which there is a single superior authority over all the member states (which claim to be sovereign at present) and is capable of making the laws and possesses the coercive competence to enforce conformity with those laws. Acceptance of international law and disarmament of states are the key issues of world government ; where as collective security is security of all states, by all states, for all states. The Universality of the security aims of rights necessitates maximum physical might ; the coordination of global policies and actions necessitate a certain amount of systematization ; systematization implies centralization. Thus, universalization and centralization are the fundamental characteristics of the collective security system. In this sense, it comes very close to world government. Collective Security hopes to enhance the (collective) power of all states against the peace-breaker, on the other hand, the system of world government, on the analogy of national government, will have reduced the military might of its subjects (states), and therefore military insecurity is not its main problem. Under the system of world government, a crisis involving the use of force by any section of the international community would not constitute 'aggression' necessitating war ; the crisis would constitute an

101. Thomas, G. Weiss, n. 65 op. cit. p. 49.

illegal use of force or deviant behaviour necessitating police action or correctional coercion.¹⁰²

It shall be worthwhile to examine the relationship between collective security and non-alignment to stress the point that the later is different from the old concept of 'neutrality' as well as from the new idea of 'neo-neutrality' and for this reason, it is not at all antithetical to the principle of the former. It is in view of the paramount fact that both desire conditions of peace in the world and sanction recourse to war by means of a war to prevent an aggression launched by a law-breaking state. If the two concepts do not differ on any point in their essential implications, it is that while the principle of collective security stands for the collective action of all peace-loving states against a recalcitrant state after branding it an 'aggressor', the course of non-alignment recommends the avoidance of passing judgments on issues in which the vital problems of peace and war are concerned.¹⁰³ Both 'non-alignment' and 'collective security' view the problem of 'national security' as a part of the general problem of 'international security'. Collective Security is based upon the principle of concern which is also one of the postulates of the theory of non-alignment. By the assertion of its faith in international organization, non-alignment helps strengthen the only institutional machinery through which collective security can be put successfully to work.¹⁰⁴

It is true that national interest determines the foreign policy of every state, it is equally true to say that faith in the principle of collective security and commitment to the course of non-alignment enjoin that some adjustment of 'national interest'

102. M.V. Naidu, n. 58, op cit. pp. 15-16.

103. J.C. Johari, n. 81, op. cit. p. 296.

104. Mahendra Kumar, n. 32 op. cit. p. 436.

with 'international interest' is certainly called for. The idea of non-alignment underlines an understanding of this imperative and advocates the principle of the indivisibility of peace and security interest itself. What collective security requires and non-alignment supports is not the renunciation of national-interest but only its reinterpretation. The contribution that non-alignment has made to collective security is the insistence that the reconciliation between the requirements of collective security and the demands of national interest is not only possible but desirable.¹⁰⁵

Non-alignment is complementary to collective security in two other ways also. One, it strengthens collective security by denouncing the policy of alliances, a policy which refers to collective defence system. But it remains to be stated here that non-alignment seeks to remove that contradiction and create conditions favourable to the successful working of collective security. The other way in which non-alignment creates favourable condition for collective security is by working for the ultimate emergence of a world order in which there is a considerable diffusion of power. The most favourable situation for collective security would be one in which all states command approximately equal resources. In other words, the existence of several great powers of roughly equal strength is essential for collective security. A collective security system also demands a substantial universality of membership. The creation of both these condition is the goal towards which non-alignment is working. With the help of non-alignment, the common impression can be corrected that 'collective security' is synonymous with 'military action'. Non-alignment insists on the desirability of the creation of such a world order in which the mere presence of world public opinion serves as an effective sanction against aggression. There is,

105. J.C. Johari, n. 81, op cit. p. 297.

however, one source of conflict between collective security and non-alignment. Action under collective security is possible only when the aggressor or the disturber of peace is clearly identified. But non-alignment recommends the avoidance of passing judgment on issues in which the vital problems of war and peace are involved.¹⁰⁶

A system of 'collective security' has often been pictured as a pattern of international relations which is able to dispense with the 'balance of power' and thereby to elevate the nature and tone of the world society. The record of attempts at collective security to date teaches a different lesson namely, that short of effective world government such efforts are certain to be associated with 'balance of power' policies and cannot operate unless a foundation of "power politics" exists. It is clearly incompatible with neutrality and with a balance of power policy except under most unusual conditions of balanced stability over a period of time.¹⁰⁷ As Quincy Wright explained, "The relations of the 'balance of power' to 'collective security' have.....been at the same time complementary and antagonistic."¹⁰⁸ Wright believed, "collective security must rely upon a balance of power which maintains such general stability that a localizing of policing actions is possible."¹⁰⁹ Hence there is no necessary contradiction between Professor Wright's assertions, on the one hand, that the principles of collective security are "not antithetic but supplementary" to those of the balance of power and that "international organization to

106. Mahendra Kumar, n. 32 op. cit. pp 437-38.

107. Norman D. Palmer and Howard C. Perkins, n. 47, op. cit. pp 227-241.

108. Quincy Wright, "A Study of War" University of Chicago, Chicago Press, 1942, Vol. II p. 781.

109. Quincy Wright, "Problems of Stability and Progress in International Relations," University of California Press, Berkely 1954, p. 106.

promote 'collective security' is.....only a planned development of the natural tendency of 'balance of power' policies," and, on the other hand, that "the fundamental assumptions of the two systems are different."¹¹⁰

Under usual circumstances 'collective security' and a 'balance of power' policy are incompatible because the object of the one is to align all other states against an offending or warmaking state, whereas the other contemplates the maintenance of such an equilibrium of power that no state will dare undertake a resort to arms. The substance of the first is a world front against a possible aggressor ; the substance of the second is two approximately equal and opposing fronts. Collective Security also implies a far greater degree of systematization than does balance of power." Balance of Power is a system only by courtesy while the accusation that it amounts to anarchy is too strong, it is assuredly a most unsystematic system.....Collective Security, on the other hand, represents the urge for systematization, the institutionalization of international relations." The principle of collective security requires that states identify their national interest so completely with the preservation of the total world order that they stand ready to join the collective action to put down any aggressive threat by any State, against any other state anywhere.¹¹¹

"The relationship between 'collective security' and 'disarmament' has received little attention for the most part they have been regarded as separate approaches to the problem of war and peace. While it has not yet appeared feasible to link the two in an interdependent way in a practicable measure for maintaining peace, it may well be useful to observe their theoretical

110. Norman D. Palmer and Howard C. Perkins, n. 47 op cit. p. 241.

111. *Ibid*, pp. 241-42.

relationship.¹¹² Relationship between these two concepts finds its place in the fact that while the disarmament idea proceeds from the assumption that men fight because they have arms, the concept of collective security enjoins that all peace-loving states must join hands to check the armed action of a Charter-breaking state so as to maintain and restore international peace.¹¹³ A forceful statement of this was made in January, 1952, by Benjamin V. Cohen of the United States delegation to the General Assembly : "I should like to stress the fact that there is an intimate relationship between a program of collective security and a program of disarmament. The two, by their nature, go hand in hand. In the disarmament field, we look to the day where no nation will have armed forces or armaments which could pose a threat to a neighbour. In the collective security field, we look to the day when nations will not rely so much on their own forces as on the United Nations for their security. If states are assured that in case of attack they will not stand alone, they will need fewer arms for their defence. As progress is made in disarmament, the task of building collective security became simpler. The two march together.....Disarmament and collective security are the two great enterprises for peace that this General Assembly has before it."¹¹⁴

In fact, if there were substantial disarmament, collective security might be a practical measure. Moreover, some kinds of international enforcement measures would in all probability be necessary to induce nations to agree to substantial disarmament, just as it would be essential to maintain the peace once they were

112. *Ibid*, p. 244.

113. J.C. Johari, n. 81 op. cit., pp 293-94.

114. Norman D. Palmer and Howard C., Perkins, n. 47 op, cit, p. 244.

disarmed.¹¹⁵ It may also be commented that the plan of disarmament is the counter part of the scheme of collective security. What the former desires to achieve in a negative way, the later seeks to do the same in a positive manner. That is, while the collective security desires the use of arms by the peace-loving states to check the armed aggression of a recalcitrant state, disarmament seeks "to establish conditions that will assure a country that others are neither intending to attack it nor capable of doing so, at least in the immediate future. The strategy is to unwind rather than to build-up a confrontation of armed forces." The technology of destruction has overwhelmed all possibilities of physical defence and made national and human survival dependent on the non-use of arms. Informed with this fact, Philip Noel-Baker has suggested that a collective security treaty should be signed simultaneously with a disarmament treaty with a view to providing an alternative guarantee of the security of a disarmed state."¹¹⁶

'Collective Security' should be clearly differentiated from 'collective-defence'.¹¹⁷ There are some striking similarities in substance between these two types of collaborationist policy. They have recently acquired a similarity in name, too, which is confusing because it tends to obscure their divergence. Both in the case of alliances, now usually called collective defence arrangements, and in the case of collective security under the United Nations, countries commit themselves to assist others against attack. In both instances, then, the victim of an attack expects his own defensive strength to be supplemented by the strength of other nations. And yet the two policies differ fundamentally in respect to both intent and modes of action, so

115. C.P. Schleicher, n. 66, op. cit., p. 409.

116. J.C. Johari, n. 81 op. cit. p. 295.

117. A. Le Roy Bennett, n. 46 op. cit. p. 123.

that the cases in which they are complementary and helpful to each other are largely a matter of happy coincidence.¹¹⁸

Nations enter into collective defense arrangements to ward off threats to their national security interests, as traditionally conceived, emanating from some specific country or group of countries regarded as the chief national enemy, actual or potential. The motive behind such arrangements is the conviction that the creation of military strength sufficient to ward off the specific threat would be beyond their national capacity or would prove excessively and unnecessarily costly in view of the opportunities for mutual support and common defence.

The peculiarity of 'collective defence' arrangements exists, therefore, because they are directed against an opponent known to the partners of the pacts, although he may not be named in the pact for reasons of diplomatic caution.¹¹⁹ In contrast to these and the like arrangements of collective defence, collective security does not provide strength against any specific opponent. It is intended to work against any and every country, which commits aggression, whether that country is an ally or a friend or an enemy of a particular nation. Thus the nature of the peacebreaker is determinate under collective defence and indeterminate under collective security. Collective Security knows no probable aggressor but assumes that any state may become an aggressor.¹²⁰ One further peculiarity following from the first is that the allies can define in geographical terms the danger they are seeking to thwart and are thus able to make their military preparations and work out their strategy in advance of any conflagration.¹²¹ Whereas collective security aims at striking against "any aggressor

118. Arnold Wolfers, "Discord and Collaboration : Essays on International Politics," The Johns Hopkins press, Baltimore, 1962 pp 182-83.

119. *Ibid*, p. 183.

120. Mahendra Kumar, n. 32, op. cit., pp 410-11.

121. Arnold Wolfers, n. 118 p. 183.

anywhere". Military pacts like the North Atlantic Treaty Organization (NATO), ex Warsaw Pact, and a number of bilateral military pacts have all been signed keeping in view one specific enemy or another.¹²²

Two points of substantive difference arise from this varying nature of the enemy under the two types of the 'collaborationist policy.' One, that there is no room for military pacts like NATO and others in the collective security system and, two, that the allies of a collective defence military pact can make their military preparations and work out their strategy in advance. In its theoretical enunciation collective security envisages only one form of pact, that is international organization through which all nations are prepared to fight any disturber of peace. This preparedness is based on the conviction that "any aggressor anywhere" is the national enemy of every country because in violating the peace of the world community, the indeterminate peace breaker is also likely to endanger indirectly the national security of each individual nation. As a consequence, then, it is in the interest of each nation's own security that it should contribute to the effective functioning of collective security. Under the system of collective defence, the danger anticipated can be defined in precise geographical terms because the opponent is known. This is not possible under the system of collective security because the enemy is not known. Therefore, the preparedness for repelling an aggression of the known enemy and the preparedness for repelling an aggression of the unknown enemy are of a different nature. The former is definite and the latter indefinite. However, the suggestion that there is no room for military pacts in the system of collective security should not give the impression that such pacts are not permissible by international organization or that

122. Mahendra Kumar, n. 32, op. cit. p. 410.

collective security is absolutely inoperative in the presence of military pacts. Such an impression would be unrealistic because the United Nations does permit military pacts of collective defence. As such, collective defence arrangements permitted by the United Nations Charter have to be viewed not as a part of collective security but as a concession to uncontrollable realities of international society. In an idealistic world order based on collective security, collective defence should have no place.¹²³

If collective security is clearly distinguished from 'collective defense', can either be distinguished reliably from 'collective deterrence' ? The problem is exacerbated by the important distinction between general and immediate deterrence, that is, between the onset of a crisis and the point of which an imminent failure of crisis management makes an outbreak of war highly probable.¹²⁴ Day to day international relations may be characterized by some writers as a legal state of nature in which the possibility of war is ever present. This is actually what Thomas Hobbes referred to when he discussed a state of war : the "known disposition" to fighting was sufficient to create what modern writers have called the 'security dilemma'.¹²⁵ One state arms itself for motives of self-defence, and other states, fearing the military potential of the first state, arm themselves in response. The sequence of action and reaction can be extended indefinitely. However, the existence of a security dilemma in interstate relations does not make unavailable the existence of a particular crisis or outbreak of war. The system permits but does not dispose states to threaten and to attack one another. Because the 'security

123. *Ibid.*, pp. 411-12.

124. Stephen J. Cimbala, "Collective Insecurity : U.S. Defense Policy and the New World Order," *Contribution in Military Studies*, Number 162, Greenwood Press, London, 1995 p. 131.

125. Thomas Hobbes, "Leviathan" Washington Square Press, New York 1964, pp. 84-85, originally published in 1651.

dilemma' does not necessarily lead directly into crisis or war, deterrence may fail in stages. Strictly speaking, the onset of a crisis is not yet a failure of deterrence but is a failure of diplomacy.¹²⁶

The deterrent aspect of collective security, thus, involves a certain willingness on the part of international organizations and their member states to engage in crisis brinkmanship. States that are committed to defend the *status quo* must signal that they are prepared to go to war on short notice if the *status quo* is altered by force without legal sanction. However, brinkmanship is not always facilitated by certainty. Brinkmanship sometimes can be aided by leaving ambiguity in the signals sent to potential attackers about the precise costs of aggression.¹²⁷

It is often stated that regional arrangements for 'collective defense' and for other purposes establish a 'collective security system'. This is seldom if ever true, not so much because such arrangements are geographically too limited as because they are not sufficiently binding in character and do not represent such an aggregation of military strength that they can deal with any other power or combination of powers. The North Atlantic Treaty Organisation (NATO) alone among regional arrangements past or present may possibly be such an aggregation of strength ; but even if it possesses adequate might, it will not provide 'real collective security' unless its members voluntarily assume more binding obligations than they were willing to accept in the North Atlantic Treaty. NATO in fact seems to be moving in the other direction. Regional arrangements, however, could conceivably be an important part of a broader collective security system.¹²⁸

126. Stephen J. Cimbala, n. 124, pp. 131-132.

127. *Ibid.*, p. 128.

128. Norman D. Palmer and Howard C. Perkins, n. 47 op. cit. p. 243.

A pertinent question at this stage arises as to whether the formation of regional organisations in the name of 'collective self defence' is in keeping with the principle of 'collective security'. The protagonists of the view strongly contend that regional arrangements made by some states for the sake of their defence should be regarded as part of a broader 'collective security System.' Moreover, it has its sanction in the Covenant of the League of Nations and the Charter of United Nations. Others holding a moderate view contend that regional system of collective security have often been held as an intermediary stage between the old types of military alliances for mutual defence and a universal organisation for 'collective security'. Some even consider them more effective than a universal system and a necessary complement to it.¹²⁹

Hence, taking into view the actual behaviour of the states, it may be added that the formation of regional organisations in the name of collective self-defence does not conform to the spirit of the principle of 'collective security'. The Charter stands on the assumption that the states will agree and, in the midst of differences, try again and again without seeking to impose their will on each other by force or by the threat of force. On the contrary, these regional alliances are built on the assumption that agreement between or among them is impossible except by the use of force or threat of force and the clear-cut provisions of the pact are intended for the use when the machinery of international organisation has broken down. In this way, the politics of regional alliances draws inspiration from the old balance of power idea. For that reason, these cannot be treated as being in accordance with the spirit of the U.N. Charter. In fact, the formation of political

129. J.C. Johari, no. 81, op. cit. p. 277.

and military alliances is another bold symptom of disintegration of collective security system.¹³⁰

Problems of Collective Security :

Collective Security can usefully represent something more than the archetype of frustrated idealism in international affairs. It is best to think of it as a strategy that uses collective self-regulation for the purpose of generating more 'internal security' benefits (in the sense of protecting members from each other) than would exist in its absence and then to try to explore the conditions under which more or less benefits are generated. From this perspective, the classic collective security system associated with the League of Nations is simply one of an infinite variety of possible alternatives, and its failure is no more (or less) analytically interesting than the failure of a particular defensive alliance or of a particular oligopoly.

With this definition of collective security in mind, we reevaluated the theoretical arguments that have been used to condemn 'classic collective security'. Six are prominent in the literature which may be enunciated as under :

1. Collective Security requires a substantial diffusion of power.
2. Variation in assessment of threats dramatically limits the range and efficacy of collective security.
3. The free-rider problem jeopardizes any collective security arrangement.
4. Collective Security cannot survive in the absence of an outside threat.
5. Collective Security requires states to commit themselves

130. *Ibid.*, pp 279-80.

to an inflexible course of action that is insensitive to content and self-interest.

6. The logic of collective security is circular in the sense that its establishment requires that its consequences already exist.

While all of these arguments pose significant problems for any particular collective security system, none is as damning as it might first appear.¹³¹

It may, however, be pointed out at this stage that the operation of the system of collective security is not a very easy affair. It is beset with certain serious obstacles as :

1. The Political Problem :

The most important practical obstacle to the implementation of the principle of collective security is the political problem having its source in the conflict of independent foreign policies. The loyalties and interests of the nations participating in international organisation and collective security system are of a different order from those of the individuals taking part in the more intimate communities of the family and nation.¹³² The political problem also presents itself in regard to actual enforcement. Who is to apply the sanctions ? Who is to carry the burden of overt military action ? The political problem has returned to plague Western Society in the actions of the United Nations. The foreign policies of some nations have clashed periodically with the resolutions of that body. Any new action that would drain off a single drop of strength for efforts not in the national interest has been viewed with alarm.¹³³

131. George W. Downs, ed., n. 17, op. cit. pp 35-36.

132. J.C. Johari, n. 81 op. cit. p. 272.

133. Kenneth W. Thomson, in Joel Larus, ed. n. 4, op. cit. p. 297.

2. The Psychological Problem :

The operation of the 'collective security system' founders on the psychological shoals as well. It sometimes breaks down because of the collective resentments of hatred and reactions which express certain features of a particular national character. One may, indeed, comment at this juncture that even psychological dimensions of the obstacle is an off shoot of the political factor given above.¹³⁴

3. The Problem of Peaceful Change :

It may, and may not, be a problem for the system of collective security depending upon the nature of the circumstances. The relationship between 'peaceful change' and 'collective security' system is quite complex. It is true that the latter does not prefer any particular *status quo* ; it is equally neutral towards peaceful change. If peaceful change takes place without the use of force, collective security system is not to be invoked. If it is impossible or extremely difficult, the collective security system can only attempt to preserve the existing order. If powerful forces demand change by forceful means, since peaceful ones are unavoidable, the collective security system will probably fail. On the other hand, an effective system of peaceful change would lighten the burden of preventing forceful change and thus increase the success of collective security.¹³⁵

The Advantages of Collective Security :

Security structures should be evaluated in terms of their ability to fulfil two functions. Firstly, to resist aggression should threats to the security of member states arise, and Secondly, to prevent such threats from arising by preserving cooperative

134. J.C. Johari, n. 81 op. cit. p. 273.

135. *Ibid*, pp. 273-74.

relations among member states. The ability of alternative security structures to fulfil these two functions must be measured in relative terms. Accordingly, building a case for 'collective security' entails showing that a 'collective security system' provides far better balancing against aggressors and more effectively dampens the sources of aggression than other types of security system. A collective security structures 'may well fall far short of being an ideal security organization, but it may nevertheless be the best option because it provides more security and stability than alternative structures.¹³⁶

Collective Security rests on the single notion of all against one. While states retain considerable autonomy over the conduct of their foreign policy, participation in a collective security organization entails a commitment by each member to join a coalition to confront any aggressor with opposing preponderant strength. The underlying logic of collective security is twofold. *First*, the balancing mechanisms that operate under collective security should prevent war and stop aggression far more effectively than the balancing mechanisms that operate in an anarchic setting. At least in theory, collective security makes for more robust deterrence by ensuring that aggressors will be met with an opposing coalition that has preponderant rather than merely equivalent power. *Second*, a collective security organization, by institutionalizing the notion of all against one, contributes to the creation of an international setting in which stability emerges through co-operation rather than through competition. Because states believe that they will be met with overwhelming forces if they aggress, and because they believe that other states will co-operate with them in resisting aggression, collective security mitigates the rivalry and hostility of a self-help world.¹³⁷

136. George W. Downs ed., n. 17, op. cit. p. 42.

137. *Ibid*, p. 43.

Collective Security Organizations can take many different institutional forms along a continuum ranging from ideal collective security to concert.¹³⁸ These organizations vary as to number of members, geographic scope, and the nature of the commitment to collective action. What **Inis claudé** calls ideal collective security entails participation of all states of the world, covers all regions of the world, and involves a legally binding and codified commitment on the part of all members to respond to aggression whenever and wherever it might occur : The scheme is collective in the fullest sense ; it purports to provide security for all states, by the action of all states, against all states which might challenge the existing order by the arbitrary unleashing of their power..... Ideal Collective Security.....offer(s) the certainty, backed by legal obligation, that any aggressor would be confronted with collective sanctions.¹³⁹ An ideal collective security organization assumes a very high degree of congruent interest among its members. Inter-state rivalry and power politics are effectively eliminated. Balancing behaviour occurs only in response to aggression. The main advantages of collective security may be enumerated as follows :

(i) More Effective Balancing against Aggressors :

In terms of providing for effective balancing against aggressors, 'collective security' has two main advantages over 'balancing under anarchy'. First, it strengthens 'deterrence' by reducing the uncertainties of coalition formation associated with 'balancing under anarchy'. Under anarchy, a state contemplating aggression would be uncertain about whether a balancing coalition will take shape and about the military strength of that coalition. Collective

138. Robert, Jervis, "From Balance to Concert : A Study of International Security Cooperation." World Politics, Volume 38, 1985, pp. 58-59.

139. Inis, L. Claude, n. 30, op cit., pp 110, 168.

Security both increases the likelihood that a balancing coalition will form and confronts aggressors with the prospect of preponderant, rather than roughly equal, opposing force. Preponderance provides a more robust deterrent than equality and eliminates the possibility that war might break out because the aggressor misperceives the strength of the opposing coalition. Collective Security by no means guarantees that a robust opposing coalition will take shape. But it does not make it more likely that states will join a balancing coalition by establishing pre-existing commitments to do so. Under 'collective security', because states have clear interests in protecting an 'international order' that they see as beneficial to their 'individual security', they will contribute to the coalition even if they have no vital interests at stake in the actual theatre of aggression. Even if all states other than those that are directly threatened fail to uphold their commitment to collective action, the remaining coalition will have essentially the same strength as the alliance that would form through traditional balancing. In terms of deterring and resisting aggression, collective security at its worst is equivalent to traditional balancing at its best.

Second, Collective Security facilitates identification of aggressor states. Collective Security organizations both enhance transparency and encourage states to maintain relatively low levels of military-especially offensive—capability. Because of these features, it would be very difficult for a state to develop robust offensive capability without being detected. The identification of an aggressor would be more difficult in an anarchic setting. A military build up undertaken to prepare for war might be interpreted by other powers as an unexceptional manifestation of arms racing and rivalry. An easier identification of aggressor states makes for more timely and effective deterrence.¹⁴⁰

140. George, W. Downs, ed. n. 17 op. cit. pp. 44-45.

(ii) Institutionalizing and Promoting Cooperation :

A collective security organization can strengthen and deepen the foundation of cooperative behaviour that makes collective security feasible to begin with. Regimes promote cooperation and are "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations." Institutions and organizations are formalized regimes, usually embodied in more explicit and rigorous rules and decision-making procedures.¹⁴¹

In General terms, institutions promote cooperation by clarifying and operationalizing a set of norms, rules, principles, and procedures that guide state behaviour and allow for increased coordination of policy. Institutions also alter a state's expectation about how other states will behave in the future and about how its own behaviour will affect the future behaviour of other states. States become more willing to cooperate because they assume others will do the same.¹⁴²

In more specific terms, institutions can promote and deepen cooperation through several discrete mechanisms. **First**, they increase the level of information available to all parties. Even if states have compatible interests, peace may not be stable under anarchy because of the difficulties and costs involved in gathering complete information. **Second**, institutions increase the costs of defection-and help define what constitutes defection-by formalizing and making more effective punishment regimes. **Third**, institutions can promote cooperation by increasing the likelihood that

141. *Ibid*, p. 48.

142. Robert Ascelrod and Robert O. Keohane, "Achieving Cooperation under Anarchy : Strategies and Institutions", *World Politics*, Vol. 38 1985, p. 234.

international agreements emerge through linkage of issues. Institutions bring many different issues into one negotiating forum. Even if states disagree on a specific issue, they may be able to resolve the dispute through reciprocal concessions : One side gives ground on the issue under consideration in return for concessions on some other issue. Institutions also facilitate such arrangements by reducing the transaction costs associated with the negotiation of international agreements. **Fourth**, institutions hold the potential to promote interstate socialization, to transform a "minimum of political solidarity" into an international community in which states share similar values and normative orientations. Regular meetings and conferences allow ideas and values to cross national boundaries and circulate among different communities of elites. The spread of these norms in turn facilitated co-ordination of national policies.¹⁴³

These four mechanisms through which institutions promote cooperation counter the charge that a collective security organization is not needed if the conditions that make it possible are present. On the contrary, a peaceful international setting only increases the role that institutions can play in shaping state behaviour.

(iii) Ameliorating the Security Dilemma :

The third major advantage of collective security over balancing under anarchy is its ability to ameliorate the security dilemma. The security dilemma refers to the notion that a state's efforts to increase its security by threatening another state, which then responds with steps to increase its own security, paradoxically erodes the first state's security. The two states, without intending

143. *Ibid.*, pp 92-97, 100-103. and G. John Ikenberry and Charles A. Kupchan, "Socialization and Hegemonic Power" in *International Organization* Vol. 44 1990, pp 286-316.

to do so, thus find themselves in a spiral of mounting hostility and arms build-up. The intensity with which the security dilemma operates depends upon a number of conditions : the degree of trust between states, the extent to which uncertainty and incomplete information produce misperception of intentions, whether offensive or defensive forces are dominant, and whether states can distinguish between others' offensive and defensive armaments. The operation of the security dilemma is one of the key reasons that peace under anarchy may not be stable. Even if no state have explicitly aggressive intentions, anarchy fuels the 'security dilemma' and can produce spirals that lead to growing hostility and, ultimately, to conflict.¹⁴⁴

As Jervis notes, it is impossible to eliminate the 'security dilemma', but it can be ameliorated : "The ideal solution for a status quo power would be to escape from the state of nature. But escape is impossible. The security dilemma cannot be abolished, it can only be ameliorated. Bonds of shared values and interests can be developed. If actors care about what happens to others and believe that others care about them, they will develop trust and can cooperate for mutual benefit. The conditions that make collective security possible indeed ameliorate the security dilemma to a certain extent."¹⁴⁵

Collective Security ameliorates the security dilemma in four important ways. First, a collective security organization, through the mechanisms outlined few more previously, promotes and deepens cooperation. Furthermore an institution promotes the dissemination of values and normative orientations. Collective Security thus helps build the "bonds of shared values and

144. George W. Downs, ed. n. 17, op. cit., pp 51-52.

145. Robert, Jervis, "Perception and Misperception in International Politics", Princeton University Press, Princeton 1976 pp 82-83.

interests" that play a key role in ameliorating the security dilemma. **Second**, collective security ameliorates the security dilemma by dampening concern about demonstrating resolve. One of the sources of instability associated with balancing under anarchy stems from the tendency of states to seek to strengthen deterrence by engaging in actions intended primarily to bolster a reputation for resolve. Deterrence under anarchy is weakened by a potential aggressor's uncertainty about the likelihood of coalition formation. States, even if not faced with imminent threats, therefore have incentives to strengthen deterrence by behaving in ways that demonstrate to potential adversaries that adequate balancing will take place. Collective Security allows states to develop a certain degree of immunity toward isolated developments and changes in the strategic setting, changes that would, under anarchy, have far greater reverberations. Collective Security thus ameliorates the 'security dilemma' by making demonstrations of resolve less likely and by decreasing the chances that such demonstration, when they occur, snowball into major confrontations.¹⁴⁶ Third, collective security, by increasing transparency and thereby reducing uncertainty and the chances of misperception, decreases the likelihood of unintended spirals. Uncertainty is one of the key factors fueling the 'security dilemma'. When faced with incomplete information about the intentions and capabilities of others, states are forced to remain on guard, to prepare for the worst case. Uncertainty and incomplete information thus provide fertile ground for unintended spirals.¹⁴⁷ Collective Security increase

146. George, W. Downs. ed. n. 17 op. cit. pp 52-53, see also John Lewis Gaddis "Strategies of Containment : A Critical Appraisal of Postwar American National Security Policy", Oxford University Press, Oxford 1982 esp. pp. 198-273 and Robert, Johnson, "Exaggerating America's States in Third World Conflicts." International Security, Vol. 10. No. 1, pp 32-68.

147. Robert Jervis, n. 145, op. cit. pp 67-82.

transparency and therefore reduces the likelihood of misperception. Provided with more complete information, states would also have higher confidence in their assessment of other's intentions and capabilities.¹⁴⁸ Fourth, collective security ameliorates the security dilemma by encouraging states to adopt predominantly defensive military postures. Under collective security, states would need to maintain some level of offensive capability to make credible the threat to counteraggression through collective action. But they would not need offensive capabilities robust enough to carry out. Major states do not need robust offense because deterrence is easier under collective security.¹⁴⁹

To summarize, the advantages of collective security over balancing under anarchy are threefold. **First**, collective security more effectively deters and resists aggressor states by making more likely the formation of a balancing coalition and by confronting aggressors with the prospect of preponderant, as opposed to roughly equal, force. **Second**, collective security institutionalizes, and therefore promotes, cooperation. **Third**, collective security ameliorates the 'security dilemma', thereby enhancing stability and reducing the likelihood of unintended spirals of hostility.¹⁵⁰

Collective Security arrangements can take three main forms : (1) great power concerts, (2) conflict management by international organizations, and (3) limited security regimes. In a concert system, the member states explicitly agree to regulate their competition and to act together to defuse common threats to stability. The "Concert of Europe" established after the Napoleonic

148. *Ibid.*, 1985, n. 138 pp. 73-76.

149. Malcolm Chalmers, "Beyond the Alliance System : The case for a European Security Organization." *World Policy Journal*, Vol. 7, No. 2, 1990, p. 240.

150. George, W. Downs, ed. n. 17 op. cit. p. 55.

Wars is the most prominent example of this sort of system, and some writers now propose it as a model for the emerging post-cold war order. Advocates of Concert Systems acknowledge that they are appropriate only when certain conditions are met, including the following : (1) common satisfaction with the status quo, (2) mutual recognition that war is of little utility, (3) common interest in preserving peace to concentrate on domestic affairs, (4) joint acceptance of the principle of reciprocity, and (5) a high degree of "transparency" (i.e., limits on secrecy). Under these conditions, agreements for regular consultations among the great powers are believed to facilitate common action against common threats to stability. The obvious problem with concert systems is that they are most viable when they are least needed (i.e., when all great powers accept the status quo but are ineffective at precisely the moment where peace is most clearly threatened. Once a serious threat to peace emerges, however-due to exogenous shifts in the balance of power, domestic upheavals, the emergence of elites unfamiliar with or uncommitted to the principles of the Concert, etc. the system soon reverts back to the familiar workings of the balance of power.

A second form of collective security is based on formal international organizations such as the United Nations. Despite the hope that the U.N. Security Council would provide a deterrent to aggression and a forum for the peaceful settlement of disputes, the UN's primary contribution to collective security has been the provision of peacekeeping forces to war-torn regions and the maintenance of a negotiating forum to facilitate negotiations and to mobilize international opinion. Although these efforts have neither brought an end to war nor done much to make states more secure, they should not be dismissed entirely. In particular, such institutions have played a valuable though modest role in

helping conflicting parties overcome the practical barriers to a settlement.

A third collective security mechanism might be termed "limited security regimes", defined as specific bilateral or multilateral agreements designed to eliminate or reduce specific sources of insecurity between potential or actual rivals. Bilateral and multilateral arms control agreements, confidence-building measures, consultations on military doctrine, procedures such as the US-Soviet "Hotline" and the so-called "transparency regime" prohibiting interference with reconnaissance satellites all fit in this category of collective security.

Unlike the collective security arrangements discussed above-which usually rest on permanent, multilateral institutions-limited security regimes are usually the result of direct state-to state accords. Whereas a Concert System involves general principles of consultation and joint action in various unspecified circumstances, a limited security regime is a functional agreement intended to remove a specific source of insecurity.¹⁵¹

The collective security system has been criticized as being too idealistic and impractical. It is based on a primitive political structure similar to that of the balance-of-power system. Yet it expects nation states and their governments to abide by moral and legal restrictions voluntarily, rather than out of respect or fear of centralized world authorities. A collective security system is unrealistic because its implementation would require nation-states, which exist now in what is fundamentally a

151. Stephen M. Walt, in Richard Shultz, Roy Godson, and, Ted Greenwood, ed., "Security Studies for the 1990s Brassey's US, A Maxwell Macmillan Company, Washington, Newyork, London, 1993 pp 255 to 257. See also Stephen M. Walt, "The Renaissance of Security Studies, in "International Studies Quarterly 32 June 1991 : pp. 211 to 39.

decentralized, balance-of-power system, to refrain from entering into alliances or other, less formal political arrangements.¹⁵²

Criticisms of collective security seem to cluster around six principle themes, each of which will be examined in turn. The first is over the conditions necessary for collective security.¹⁵³ As Richard Betts has noted :

'Reborn enthusiasm for collective security is fuelled by confusion about which is the cause and which is the effect in the relation between collective security and peace, and by the conflation of present security conditions (absence of a threat) with future security functions (coping with a threat). This conceptual confusion raises doubts about the congruence of form and function in a collective security system. Is the system designed in a form that will work in conditions where it is needed, or does the form reflect conditions where it is not needed.

In other words, the very rebirth of enthusiasm for collective security at the end of cold war leads to the suspicion that make it now seem possible (peace-absence of a threat) will lead to its demise when inevitably the conditions change. For, "a system designed in good times to cope with bad times should be judged in the terms of bad times rather than good times."¹⁵⁴

A related concern is that the theory of collective security is normative, not descriptive. Thus, while the theory suggests what nations ought to do in response to aggression, it does not describe what they should in fact do. Forecasting whether the conditions

152. Theodore A. Coulombis and James H. Wolfe, "Introduction to International Relations : Power And Justice, "Prentice Hall of India, Private Limited, New Delhi 1986 pp. 55-56.

153. Mark T. Clark, "The Trouble with Collective Security", in *Orbis*, No. 1, Spring 1995, p. 241.

154. Richard K. Betts, "System for Peace or Causes of War ? Collective Security, Arms Control and the New Europe" *International Security*, Summer 1992, pp 6, 8.

of peace will continue beyond the formation of such a system, thereby strengthening the conviction that collective security will function as designed, is problematic at best.

A second concern is over the issue that the universality and automaticity of the commitments of collective security will not be matched by members' actions. The norm of collective security requires that states will subordinate their "own immediate interests to general or remote ones." The strongest criticism made against the theory is that states fail to honour commitments to automatic actions, for a variety of reasons (e.g., national interest, sovereignty, independence).¹⁵⁵

A third problem with collective security involves the timing of the response. Although the theory of collective security generally allows for a preventive diplomatic function to breaches of the peace,¹⁵⁶ the mechanism for military responses is not well developed. In contrast to an alliance, where there exists a clearly identified enemy, well-developed war plans, pre-war deployments, joint training, and doctrine well established, "collective security is likely to delay reaction to attack, because the members of the system must react, mobilize, and coordinate their response adhoc." In such circumstances, strategic initiative can often negate tactical advantages, thus requiring the collective security system "to rely on counterattack to take back lost territory, rather than on direct defence "to defeat aggression."¹⁵⁷

A fourth concern is that the emphasis on multilateralism in the theory of collective security *denigrates* the value of unilateralism. Unilateralism affords the greater flexibility but the

155. *Ibid.*, p. 12.

156. Sir Brian Urquhart, "The U.N. : From Peace-Keeping to Peace-making." *Adelphi Paper*, 265, winter 1991/92, p. 19.

157. Mark, T. Clark, n. 153 op. cit. p. 243.

least amount of power. Without prior obligations any system of security, individual states have the greatest latitude in attempting to enhance their security, though without the corresponding support of allied nations. Multilateralism, on the other hand, affords the greatest amount of power, but the least amount of flexibility. Alliances fall somewhere in between. The advocate for multilateralism thus tends to depict unilateralism as either ineffective, legitimate, or both. However, a major dilemma for the multilateralism of collective security is its dependence on unilateralism for leadership.¹⁵⁸

Fifthly, because collective security envisions an automatic, multilateral response, such a response may actually turn minor wars into major ones. Normally all wars confined to a particular region are not of immediate interest to every one, but collective security theory determines that any breach of the peace threatens international stability. Every state, regardless of alignment or cultural affinity, is based on to act in concert. Small wars can thereby become global ones.¹⁵⁹

Lastly, there is a serious problem with the implicit commitment to deserve the, *status quo*. For by honoring the *status quo ante*, irrespective of demerits, collective security potentially undermines its credibility among any members of the system harbouring a grievance. Even third parties to conflicts fluently disagree on who the aggressors may be in any particular case.¹⁶⁰

Because of these considerations the student of international politics must regard collective security as one of those desirable goals which under present conditions are distant and unattainable, perhaps "illusive myths." Quincy Wright concluded

158. Richard K. Betts, op. cit. n. 154, pp. 14-15.

159. *Ibid*, p. 18.

160. Mark. T. Clark n. 153, op. cit. p. 244.

that it will be reached "only when the balance of power has been so stable that attention has been diverted from it "and perhaps only when there has been created "a democratic organization of the world able to supersede the balance of power as the basis of security.¹⁶¹ George Schwarzenberger believed that "until the day when the Western and Eastern Worlds no longer consider each other as the potential aggressor, collective security, as envisaged under the Charter of the United Nations, must remain a dead letter.¹⁶² However, with the end of the cold war, this differentiation has become diluted if not totally absent. Hans Morgenthau regards collective security as not only an unworkable but an unwise and dangerous principle, chiefly because in his view it means that under it no war could be localized, that every war would become a world war.¹⁶³

Moreover, as Professor Claude noted, there is a growing feeling that "the effort to create a collective security system is not an appropriate response to the problem of managing international power relations in the present era.... In certain basic respects the doctrine of collective security is obsolete—it envisages a system which might have been feasible in an earlier period of international relations, but can hardly be expected to operate effectively in the setting which has been produced by the transformations of recent years.....The threat of nuclear war.....poses new problems which make collective security appear as irrelevant to the management of power relations as machine guns have become to the frustration of great power aggression.¹⁶⁴

In summary, as Claude puts it, the "idea of collective security has had curious history, in that both students and practitioners

161. Quincy Wright n. 108, op. cit. pp. 781-783.

162. Georg Schwarzenberger, n. 60, op. cit. p. 529.

163. Hans J. Morgenthau, n. 61 op. cit. pp. 411-412.

164. Inis. L. Claude, n. 30, op. cit. pp. 192, 194.

of international relations we *waxed*. Simultaneously euphoric about its promised benefits and apoplectic but its threatened costs ; we have been unable either to accept it or to acknowledge our abandonment of it. We reject and repudiate it in practice, but persist in coding it in theory."¹⁶⁵ As a result, more-recent proposals for collective security, and to some extent its formulation in theory, have been substantially curtailed, especially with regard to its universality and automaticity, by the tacit acknowledgment of its substantive problems. At least with respect to its theoretical case, however, it is hard to see the difference between the traditional balancing behaviour of alliances and coalitions and collective security, in the event that the latter loses two of its more critical components.¹⁶⁶

165. Inis L. Claude, Jr., "The New International Security Order : Changing Concepts," *Naval War College Review*, Winter 1994, p. 12.

166. Richard K. Belts, n. 154 op. cit. p. 25.

CHAPTER III

**THE UN CHARTER
AND
COLLECTIVE SECURITY**

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THE UN CHARTER & COLLECTIVE SECURITY

Despite the tragic history of the interwar attempt at collective security through the League of Nations, there still existed considerable enthusiasm within many government and private groups during World War II for the postwar creation of a global organization whose purpose would be the prevention of aggressions. Interest in such a project was perhaps greatest in the United States, where plans for the establishment of United Nations were closely tied to the general planning of the postwar order carried out under President Franklin D. Roosevelt and Secretary of State Cordell Hull. After 1941 Washington sought to convince its wartime allies of the merits of participating in a postwar global security organization. From the very start of these discussions, one central theme clearly emerged : whether oriented toward regionalism, as advocated by Moscow and London, or toward universalism, as Washington favoured, the new security system was to be premised on the hegemony and unity of the Great Powers. As Winston Churchill remarked to Joseph Stalin at Teheran : "We are the trustees for the peace of the world." The centrality of the Great Powers was felt to represent a realistic recognition of the fact that any new security organization could not possibly function without the support, much less against the will, of any of them. Their unity was thus to be the key to the postwar order, and their co-operation the basis of any collective action.¹

1. Mark W. Zacher, "International Conflicts and Collective Security 1946-77 : The United Nations Organization of American States, Organization of African Unity and Arab League." Praeger Publishers, Praeger Special Studies, New York, 1979, p. 31.

The Charter of the U.N. contained the following principles for making the concept of collective security more workable. (a) Prohibition of use of force (Art. 2(4) except limited use of force in self-defence against armed attack till the Security Council takes necessary measures (b) Settlement of disputes through peaceful means (Art. 2(3) and elaborate procedure laid down in Chapter VI of the Charter (c) Provision for effecting disarmament and regulation of armament (Arts. 11, 26 and 47) ; (d) Collective guarantee of security (Art. 1(1) and Chapter VII) ; (e) Collective force for deterrence of sanctions against violation of international peace and security in consistent with the purpose of the Charter (Art. 1(1) ; Chapter VI and Art, 106 ; (f) The collective security to be dependent on a firm nucleus of Great Power agreement (Art. 27) ; (g) Regional Arrangements and Agencies for settlement of disputes, maintenance of peace and security within their region and enforcement action by them would be subject to the authorization of the centralized organ i.e., Security Council of U.N. (Chapter VII).

The opening words of the Charter express the determination of the peoples of the United Nations" to save succeeding generations from the scourge of war", and therefore recognize the maintaining of peace and security as the main purpose of the Charter.⁴ In Art.1 all the members undertake to take collective action against violation of peace and security. It also emphasized two principal ways of dealing with specific disputes and situations likely to endanger peace and security. One is to seek a peaceful settlement or an adjustment of disputes and situations by the methods elaborated in Chapter VI of the Charter. The other is that of taking collective measures of coercive nature for the prevention and removal of threats to the peace and for the suppression of

4. Preamble of the Charter of the United Nations.

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4. Preamble of the Charter of the United Nations.

acts of aggression and other breaches of the peace. This set of "last resort powers" is outlined in Chapter VII of the Charter. Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression.⁵ The organization is envisaged to have universal membership of all peace-loving nations willing to abide by the Charter.⁶

Unlike the Covenant of the League of Nations, the Charter emphasizes the principle of avoidance of arbitrary use of force by states. The Preamble declares 'that armed force, should not be used to save in the common interest'. Article 2(3) not only emphasizes the principle that states should solve their problems through peaceful means, but also obligates the members, as a 'cardinal principle of United Nations', to refrain from using force in any way inconsistent with the purpose of United Nations (Paragraph 4).⁷ Paragraph 4 of Article 2 is not very clear on the meaning of the word 'force', but in the light of the discussions at San Francisco, of other provisions of the Charter, and of common usage, the word may be interpreted to mean 'physical force or 'armed force'. Therefore, coercion through economic or diplomatic or psychological methods is to be excluded from the scope of the term 'force'.⁸ Article 2 para 4 of the Charter lays down a general prohibition on the right of states to use force against the territorial integrity and political independence and inconsistent with the purposes of the Charter. However the use of force by states against armed attack in self-defence or collective self-defence under Art. 51 or against enemy states under Art. 53 and Art. 107 or under

5. Art. 1 of the U.N. Charter.

6. Dr. Subhas C. Khare, n. 2, op. cit. p. 138.

7. M.V. Naidu, "Collective Security and United Nations : A Definition of the UN Security System. The Macmillan company of India Ltd. 1974, p. 29.

8. Leland M. Goodrich and Edvard Hambro", Charter of the United Nations," World Peace Foundation, Boston 1949 p. 104.

the authorization of the U.N. is permitted. The Security Council is given primary responsibility to use force for the maintenance of international peace and security under Chapter VII of the Charter.⁹

The Charter in Art. 2 para 4 imposes obligation on the members to settle their disputes through peaceful means.¹⁰ In Chapter VI, Articles 33 to 38, procedural provisions have been made in this regard. A separate organ for settling legal disputes has been provided in International Court of Justice. In Art. 14 of the Charter power is given to the General Assembly and in Chapter VI to the Security Council for interference in disputes and situations which are likely to impair friendly relations among states and affecting international peace and security.¹¹ The Charter gives the Security Council a range of specific powers that it may exercise with respect to any dispute or situation likely to lead to international friction submitted to it by a member or non-member state. It may, in the first instance, when a particular dispute or situation has been brought to its attention, conduct an investigation to determine whether it is sufficiently serious to endanger the maintenance of international peace and security.¹² If it finds that the continuance of the dispute is likely to endanger international peace, it may call upon the parties to settle their dispute, by peaceful means in accordance with their undertakings under Article 2, Paragraph 3, and Article 33 of the Charter. Additionally, the Council may recommend proper procedures or

9. H.G. Nicholas, "The United Nations As A Political Institution" Oxford University Press, London, 1971 p. 23, Art. 24 of the U.N. Charter.

10. Art. 2(4) of the U.N. Charter.

11. For detailed discussion see Chapter VI of the U.N. Charter.

12. Article 34, of the U.N. Charter ; see also Leland M. Goodrich, "The UN Security Council in James Barros, ed." The United Nations : Past, Present and Future, The Free Press, New York, 1972 p. 22.

methods of adjustment, taking into account any procedures that the parties have already agreed to and also taking into consideration that legal disputes should generally be referred to the International Court of Justice.¹³ Should the parties to the dispute fail to settle it by means of their own choice, the Council may recommend such terms of settlement as it may consider appropriate.¹⁴ If the Council finds that the dispute is of a local nature which could most appropriately be settled by a regional agency, it shall encourage the parties to follow that course without, however, impairing its right to consider the matter if the parties so request.¹⁵

The framers of the Charter were well aware that in order to make the concept of collective security a reality it is necessary that military power should not be concentrated in the hands of a few nations so that none is too strong to dominate the will of others or to make the U.N. action ineffectual. If there are a few super powers they would not be contained in their aggressive designs by collectivized force and action. Collective power of the centralized and institutionalised force must possess for superior power to act as a deterrent against any potential aggressor. For this purpose the Charter has provided for disarmament and regulation of armament.¹⁶ With regard to disarmament the Charter nowhere prescribes the urgency or the inevitability of disarmament as its goal.¹⁷ Only in two places does the Charter use the word disarmament : The Military Staff Committee, under Article 47(1), is expected to advise and assist the Security Council on 'possible disarmament.'¹⁸ The General Assembly, under Article 11, "may

13. Article 36, of the U.N. Charter ; see also n. 12 op. cit. p. 22.

14. Article 37, of the U.N. Charter ; see also Ibid., p. 22.

15. Article 52, of the U.N. Charter ; see also Ibid., p. 22.

16. Dr. Subhas. C. Khare, n. 2 op. cit. pp 139-40.

17. M.V. Naidu, n. 7, op. cit. p. 41.

18. Article 47(1) of the U.N. Charter.

consider—the principles governing disarmament and may make recommendations to the Members or to the Security Council or to both.¹⁹ Similar is the spirit behind the mention in the Charter of armament regulations. First of all, in the three places where the Charter touches on the subject, it uses the milder term 'regulation' and not 'control' of armament. Regulation of armament is mentioned along with disarmament in Articles 47(1) and II.²⁰ Only in Article 26 does the Charter impose an obligation on the Security Council to submit to the members plans 'for the establishment of a system for the regulation of armaments.'²¹

When a dispute or situation assumes a serious character with one or more of the parties involved threatening to use of force, or actually engaged in doing so, or when there is thought to be a danger that a violation of the peace will occur, the Council may determine the existence of a "threat to the peace, breach of the peace or act of aggression," under Chapter VII of the Charter²² and proceed to deal with the critical matter in such manner as it may decide is most appropriate, with three broad alternative course of action open to it. These may be followed in any order or combination that the Council decides.²³

The maintenance of international peace and security is, as Art. 1(1) indicates, the most important goal of U.N. Chapter VII is the section of the Charter which is specially devoted to the preservation and restoration of peace. Noticeably, the first portion of the sentence constituting Art. 39 refers to a threat to or breach of 'the peace' as a prerequisite for action by the Security Council,

19. Art. 11 of the UN Charter.

20. See Art. 47(i) and (ii) of the UN Charter.

21. Article 26 of the U.N. Charter.

22. Article 39, of the U.N. Charter.

23. See Leland M. Goodrich, Edvard, Hambro, and A.P. Simons, "Charter of the United Nations : Commentary and Documents" Columbia University Press, New York, 1969, pp 293-302.

while the sentence concludes by stating that the particular measures to be taken should serve 'to maintain or restore international peace and security. The concept of 'peace' can be defined widely or narrowly. Under any definition the concept encompasses the absence of an organized use of force between states. What is questionable is whether it also includes friendly relations between states or other material values. Such an expanded definition is clearly to be found in Art. 1(2). In contrast, it may be assumed that 'peace' in Chapter VII means the absence of the concept becoming completely blurred. Certainly, to express incorporation of the threat to the peace shows that Art. 39 can come into play long before a breach of peace occurs.²⁴ A breach of the peace exists when hostilities are engaged in between armed units of two states. In this connection, it is irrelevant whether the hostilities are quickly ended because one side is militarily defeated. A breach of the peace also exists if force of arms is applied by or against an effective independent de facto regime which is not recognized as a state. Aggression presumes the direct or indirect application of the use of force ; thus, it is also always a breach of peace. The particular designation is justified in that, with the determination of aggression, the party which has caused a breach of the peace is established. Where an act of aggression exists, there is an aggressor. An armed attack, as required for application of Art. 51 of the Charter, is in any event aggression.²⁵ The General Assembly of the U.N. adopted a definition of aggression in Res. 3314 (XXIX) of December 14, 1974.²⁶ The Resolution of the General Assembly does not bind the Security Council. Art. 39 only establishes a jurisdiction of the Security Council. Nevertheless the

24. Bruno Simma, ed, "The Charter of the United Nations : A Commentary", Oxford University Press, the Newyork, 1994, p. 608.

25. Ibid, pp 609, 610.

26. GAOR (XXIX) of December 14, 1974, Supp. No. 31, p. 142.

Security Council can rely on the resolution in determining aggression. Of major significance is the fact that, according to Art. 3(g) of the definition, aggression also exists when a state sends or is substantially involved in sending into another state armed bands with the task of engaging in armed acts against the later state which are of such gravity that they would normally be seen as aggression.²⁷

The broadest and most indistinct concept in Art 39, although certainly crucial for the purpose of the maintenance of peace, is that of threat to the peace. The relationship of the later to the concept of endangering the maintenance of international peace and security as expressed in Arts. 34 and 37, which belong to Chapter VI, is not evident. While it must be determined in Arts. 34 and 37 whether the continuance of the dispute or situation could 'endanger' the maintenance of international peace and security, Art. 39 makes the threat to the peace the threshold for its applicability. In this regard, a judgment of the Security Council which is based on a majority decision without the dissenting vote of a permanent member acquires decisive significance. An abstract distinction between the threat to the peace and the mere endangering of peace does not appear possible. The Charter rests on the requirement that the Security Council, on the basis of its opportunity to make an assessment, will determine the existence of a threat to the peace which open the route to large-scale intervention under Chapter VII.²⁸

In Art. 39 the Security Council has been given power to make determination of the existence of the threat to peace breach of peace or act of aggression. After being satisfied of the existence of any of such situation it can take collective action for remedying

27. Burno Simma, ed., n. 24 op. cit. p. 610.

28. Ibid, p. 610.

the situation and restoring the peace. The Charter has thus centralized and institutionalized the process of determination of the crisis and for launching of the collective action. It has thus improved upon the Covenant of the League of Nations under which the League was not competent to decide whether or not a state had resorted to war in violation of the Covenant, but was left on each member itself to decide.²⁹

Under the Charter once the Security Council has decided as to the existence of the situation under Art. 39 then it can act by making recommendations to the members or decide upon measures to be taken by the U.N. for the maintenance of international peace and security.³⁰

The Charter has also given power to the General Assembly of the U.N. to discuss any matter within the scope of the Charter and to make recommendations to the Security Council or to the members.³¹ It can also discuss any matter relating to the maintenance of international peace and security and make recommendations for action in this regard to the Security Council³² and to the members³³ to fulfil the purposes of the Charter under Art. 1 para I.

The Charter has entrusted the primary responsibility for the maintenance of international peace and security to the Security Council and has made special provisions in Chapter VII for the enforcement of the same. After the Security Council has made a determination of the existence of the situation of threat to peace, breach of peace or act of aggression it can make recommendations

29. Julius Stone, "Legal Control of International Conflicts", Rinehart & Company, Newyork, 1959 p. 179.

30. Dr. Subhas, C. Khare, n. 2 op. cit. p. 141.

31. Art. 10 of the U.N. Charter.

32. Art. 11 of the U.N. Charter.

33. Art. 14 of the U.N. Charter.

to the disputing parties under Art. 40 to act on the provisional measures decided upon by it in order to prevent further aggravation of the situation. It also warns the members that if they fail to observe the recommended provisional measures they will thereby prejudice their position in all future actions taken by the Security Council to maintain international peace and security.³⁴

The relationship between Arts. 39 and 40 is unclear. The provision neither says expressly whether the Security Council must initially determine that a threat to or breach of the peace or an act of aggression exists, nor how the 'call' under Art. 40 is to be classified within the categories for action under Art. 39 (recommendations or decisions). The systematic position of Art. 40 in Chapter VII, however, clearly supports the view that the provision assumes the fulfillment of the prerequisites for application of Art. 39.³⁵ Since Art. 40 is systematically related to Art. 39, a prerequisite for the application of the norm contained in Art. 40 is the existence of at least a threat to the peace in the sense of Art. 39. Although the Security Council need not make an express determination in its resolution, the fact must clearly emerge that the Security Council considers the requirements of Art. 39 to be met. This is free of doubt only in the case where Arts. 39 and 40 or Chapter VII are mentioned in the resolution. Otherwise, it will always be possible for states which seek to exclude the binding effect of a resolution to point to the lack of a clear indication of a legal basis in Chapter VII. The object of measures according to Art. 40 is to prevent an aggravation of the situation. They are, thus, only possible when an aggravation is

34. Art. 40 of the U.N. Charter.

35. Rosalyn, Higgins, "The Development of International Law through the Political Organs of the United Nations," Oxford University Press, London, 1963, p. 236.

impending. Certainly, the persistence of hostilities is always an aggravation in the sense of Art. 40, since it gives reason to fear possible expansion, as well as signifying a continuation of a breach of the peace in violation of the Charter. Typically, provisional measures within the scope of Art. 40 have as their subject-matter the suspension of hostilities, troop withdrawal, and the conclusion of or adherence to a truce.³⁶ Entirely in accord with a generally recognized limitation on temporary measures in national and international procedural law, such measures may only have provisional character and leave unaffected the legal positions of the states concerned, particularly those of any parties to dispute. Thus under Art. 40 the Security Council cannot call upon the states to recognize conclusively as lawful a certain status of a territory or a border. However, it can indeed call upon states to temporarily acknowledge a particular border and, for example, to withdraw troops behind this border.³⁷

The Security Council after considering the action taken by the parties on the recommendation on provisional measures may decide upon the nature of the enforcement action to be taken against the state who has not acted on them and is responsible for the violation of international peace and security. It may recommend to members to take action under Art. 41, which stipulates that, "the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."³⁸

36. Bruno Simma, ed. n. 24 op. cit. pp. 618-19.

37. Security Council Res. 82, June 25, 1950 ; and S.C. Res. 209, Sept. 4, 1965.

38. Art. 41 of the U.N. Charter.

The formulation of Art. 41, which is the decisive legal basis for non-military enforcement measures, does not appear to be fully satisfactory. According to the wording of provision, the Security Council can decide which measures should be taken in order to implement its decisions. One could conclude from this that the decisions themselves could be taken on the basis of other legal grounds. Art. 39 refers to Arts. 41 and 42 and establishes that the Security Council should decide which measures are to be ordered under the latter articles. The regulation is to be taken as meaning that, with the fulfillment of the requirements of Art. 39, the Security Council can make determinations regarding concrete measures which serve to implement its decision to maintain or restore peace. The possible measures are circumscribed in Arts. 41 and 42. The most important limitation on Art. 41 is that it may not involve the use of armed force. The application of armed force is regulated in Art. 42, according to which the Security Council can employ land, air, and sea forces. As may be derived from Cl. 2 of Art. 42, demonstrations, particularly naval demonstrations and blockades, are classified as military operations in this sense. The employment of such military measures against a violator of peace is not permissible on the basis of Art. 41 even when the actual application of armed force does not come about. It is not clear whether the employment of military means for the enforcement of boycott measures according to Art. 41 is also precluded when the application of armed force is not directed against a peace breakers, but rather against third states.³⁹ Art. 41 mentions several examples of different boycott measures, of which the most important is the complete or partial interruption of economic relations. It also enumerates the measures to be imposed only by way of example and does not limit them. The

39. Bruno Simma, ed. n. 24 op. cit. p. 624.

Security Council can therefore take measures not mentioned in Art. 41. Thus, it can mandatorily instruct the member states not to recognize certain legal actions of a state identified as a disturber of peace.⁴⁰

The Security Council may then take into consideration the effect of such measures. If such measures prove to be inadequate, it can take recourse to Art 42, which provides "should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations."⁴¹

A prerequisite for the application of Art. 42 is the opinion of the Security Council that measures provided for in Art. 41 would be inadequate or that they have already proved to be inadequate. Thus, it depends on the opinion as expressed in a decision of the Security Council which cannot be formed against the vote of a permanent member.⁴² As the formulation indicates, it is not necessary that measures have previously been ordered and implemented under Art. 41.⁴³ Rather, it is sufficient that Security Council opts immediately for Art. 42 on the basis of a prognosis of the possible ineffectiveness of measures under Art. 41.

As the ICJ correctly pointed out in its 'Certain Expenses' advisory opinion, measures under Art. 42 constitute 'enforcement

40. Ibid, p. 625.

41. Art. 42 of the U.N. Charter.

42. Art. 27 of the UN Charter.

43. See the Report of Mr. Paul-Boncour on Ch. VIII, Sect. B, UNCIO, XII, p. 507, Doc. 881 III/3/46 ; deliberations of the co-ordination committee ; 13th Session of June 9, 1945, UNCIO, XVII, p. 74, Doc. WD 256 CO/107.

measures' against a state.⁴⁴ Measures pursuant to Art. 42 will be taken above all against a state which refuses to comply with the orders of the Security Council under Art. 40. This may be the state from which the disturbance of the peace originates, although this is not a requirement for the application of Art. 42.⁴⁵ By requiring the Security Council to duly take account of a failure to comply with provisional measures, Art. 40 Cl. 3 implicitly makes reference to the possible application of sanctions, including military sanctions under Art. 42, in case of necessity.⁴⁶

At issue under Art. 42 are the employment of air, sea, or land forces to maintain or restore international peace and security. In this connection, Cl. 2 shows that Art. 42 does not only contemplate operation involving combat against other armed forces, although this is a consideration as well. Demonstrations and blockades are expressly mentioned. Demonstrations must be seen in this context above all as demonstrations of strength intended to discourage a potential peace-breaker from the use of armed force or its resumption. The concept of a blockade is not to be understood in a technical law-of-war sense. At issue is rather the effective sealing-off of particular coasts or land areas through a military action. The status of troops under UN control is determined according to Art. 42 by the nature of the action. Where a state is authorized to apply force, the armed forces employed remain fully under its control. Law of war norms are directly applicable to the extent that they are valid for the states concerned.⁴⁷

The collective action of enforcement nature would require

44. Certain Expenses, ICJ Reports (1962) PP 151 et. seq. at 164-5.

45. For the same view see Derek W. Bowett, "The United Nations Forces : A Legal Study of United Nations Practice", Stevens, London, 1964 p. 267.

46. In this regard see the debate concerning SC Res. 61 of Nov. 4, 1948, RP II, p. 335, paras 7- 16.

47. Bruno Simma, n. 24 op. cit. pp 632, 635.

armed forces at the disposal of U.N. The concept of collective security envisages that the central organ of the collective security organisation should have armed forces at its command to enforce its decisions for the maintenance of international peace and security. Provision has been made in Art. 43 of the Charter for providing military force to the Security Council for taking action under Art. 42.⁴⁸

Para 3 of the Art. 43 provides that special agreements shall be negotiated under para 1. The members commit themselves to make available to the Security Council armed forces under special agreements entered into between them and the Security Council. The agreements so entered into will specify the number of troops, their type, degree of readiness, their general location and the nature of facilities and assistance which the state commit to make available to the U.N.⁴⁹

Pursuant to Art. 43(1), the members of the UN undertake to make armed forces available to the Security Council, and to render assistance and to accord relief including rights of passage to the extent necessary for the maintenance of international peace and security. This fundamental obligation is, however, conditioned by the fact that it exists only in accordance with one or more special agreements. The obligation in Art. 43 is thereby transformed into a duty to negotiate. The member states must conduct negotiations in order to facilitate the conclusion of the relevant agreements. It follows from this that no member state may be coerced into accepting particular provisions contained by such agreements. Para 2, explains more precisely which provisions are to be made. In Art. 43 a basic duty to negotiate is imposed on the member states which, however, cannot be realized in the absence of

48. Dr. Subhas C. Khare, n. 2, op. cit. p. 142.

49. Art. 43 of the U.N. Charter.

unanimity.⁵⁰ This was clearly recognized in 1945, and the regulation in Art. 106 was to remedy any eventual difficulties which would arise. However, Art. 106 also presupposed unanimity among the five permanent members of the Security Council, and since this did not exist, the provision could not become effective.⁵¹

Under the conception outlined in Art. 43, the details of the duty to render assistance should be established in one or more agreements. Such agreements should contain specific provisions concerning the armed forces to be made available to the Security Council. In this connection, it is of special significance where the armed forces will be stationed and what procedure the Security Council can use to call upon them. Moreover, what rights of passage are to be allowed, the numbers and stationing of forces as well as the granting of support and facilities for assistance should be determined. The ICJ has referred in this regard to the fact that provisions covering the distribution of costs between the UN and the member states can also be contained in the agreements.⁵² Art. 43 contains a singular provision for the conclusion of agreements. It determines that agreements should be negotiated on the initiative of the Security Council. In this provision, it is unclear who the negotiating parties are. Apparently, it is assumed that the negotiations will primarily occur between the members of the UN, although the Security Council will assume the initiative.⁵³

The opening word of Art. 44 makes it clear that "when the Security Council has decided to use force it shall, before calling

50. Brunno Siemma, ed ; n. 24 op. cit. p. 638.

51. UNCIO XII, p. 402, Doc. 704 III/3/36, p. 3.

52. Certain Expenses, n. 44, pp 151 et. seq. at 165-7.

53. N. Bentwich ; and A. Martin ; "A Commentary on the Charter of the United Nations." London : Routledge and Paul 1950, pp 98-99.

upon a member not represented on it to provide armed forces in fulfillment of the obligations assumed under Art. 43, invite that member, if the member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that member's armed forces."⁵⁴ Art. 44 regulates the participation in a Security Council decision on military action of those states that have placed forces at its disposal under Art 43. The application of Art. 44 is restricted to military enforcement measures under Art. 42 and to states obliged to provide troops under Art. 43. When these conditions are fulfilled, the member state concerned has full voting powers in the Security Council. This distinguishes Art. 44 from other provisions of the Charter providing for the participation of non-members in the deliberations of the Security Council (Arts. 31 and 32). The voting powers are, however, restricted to questions relating to the employment of the member's contingents.⁵⁵

Article 45 stipulates that "In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee,"⁵⁶ and Article 46 provides "Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee."⁵⁷ Article 47 speaks of the establishment of the Military Staff Committee which is "to advise and assist the Security

54. Art. 44 of the UN Charter.

55. Brunno Siemman, ed. n. 24 op. cit., pp. 640-41.

56. Art. 45 of the UN Charter.

57. Art. 46 of the UN Charter.

Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament,"⁵⁸ while Art. 47(3) distinguishes strategic direction and command.⁵⁹ The Charter itself brings all forces placed at the disposal of the Security Council under the strategic direction of the Military Staff Committee, while questions of command are to be worked out later. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the committee shall be invited by the committee to be associated with it when the efficient discharge of the committee's responsibilities requires the participation of that member in its work.⁶⁰

There is also another alternative provision in Art. 48 which imposes an obligation on the members to act on the authorization of the Security Council to carry out its decision for the maintenance of international peace and security. The Security Council for this purpose may authorize some of them to act on its behalf as was done in Korean case, where U.S. was authorized to act. Under this article some members may be asked to contribute force.⁶¹ Seyersted Finn also supports the view that source of supply of force for the action decided upon by the Security Council is maintained in Art. 48.⁶² Article 49 emphasises upon the members to join in mutual assistance to that state or states who are

58. Art. 47(1) of the UN Charter.

59. Art. 47(iii) of the UN Charter.

60. Art. 47(ii) of the UN Charter.

61. Art. 48 of the UN Charter.

62. Seyersted, Finn, 'The United Nations Force', in *The British Year Book of International Law*, London (UK), 1961 p. 460.

carrying out the decision of the Security Council. This assistance may include contribution of military force, through special agreements or through voluntary supply or of other necessities and facilities etc.⁶³ While Art. 50 states that "If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems."⁶⁴ Under Art. 84 a duty has been imposed on the administering authority of Trust territories to play its part in the maintenance of international peace and security. The administering authorities may provide Security Council with volunteer forces, facilities and assistance in action undertaken by the Security Council for the maintenance of international peace and security in fulfillment of their obligation toward the Security Council.⁶⁵

Apart from these provisions of the Charter for providing force to the Security Council to fulfil its responsibility under Art. 24 it has also been provided that Security Council while acting under Chapter VII can also utilize the armed forces organized under the Regional Arrangements or Agencies for enforcement action.⁶⁶

The famous Art. 51 specifically recognizes "the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, "but it also plainly states that "measures taken by members in the exercise of this right shall not in any way affect the authority and responsibility of the

63. Art. 49 of the UN Charter.

64. Art. 50 of the UN Charter.

65. Art. 84 of the UN Charter.

66. Art. 53(1) of the UN Charter.

Security Council to take at any time such action as it deems necessary in order to maintain or restore international peace and security."⁶⁷ Individual self-defence as the right in the absence of the law-enforcement agent of the state, to meet an attack with commensurate force is an exception to centralized law enforcement, inherent in all legal systems, domestic or international. It would limit the law-enforcement mechanism of the United Nations even though it were not expressly recognized by Article 51. Collective self-defence, on the other hand, is a newcomer to legal terminology and might even be considered a contradiction in term. What Article 51 obviously aims at is the recognition of the right of any nation, whether directly attacked or not, to come to the aid of any nation that has been so attacked. In so far as a violation of international law takes the form of an armed attack, Article 51 reaffirms the decentralization of law enforcement, not only for the immediately injured nation but for all other nations as well.⁶⁸

It is true that Article 51 subjects this reaffirmation to three qualifications. They are, however, of a verbal rather than a substantive nature. First, the right of collective self-defence shall remain unimpaired only "until the Security Council has taken the measures necessary to maintain international peace and security." Second, measures taken in collective self-defence have to be reported immediately to the Security Council. And, third, such measures shall not affect the authority and responsibility of the Security Council to take appropriate action itself.⁶⁹ Chapter VII of the Charter thus clearly envisions collective action of a far-reaching nature, and the members of the UN, by adhering to

67. Art. 51 of the UN Charter.

68. Hans. J. Morgenthau, "Politics Among Nations," Scientific Book Agency, Calcutta, 1973, p. 301

69. Ibid, p. 301.

the Charter, accepted a commitment to abide by and give full support to the decision of the Security Council.⁷⁰

The real crux of the enforcement system of the United Nations, affecting every action to be taken by the Security Council under the provisions of Chapter VII, is Article 27, paragraph 3, of the Charter. It stipulates that "decisions of the Security Council shall be made by an affirmative vote of nine members including the concurring votes of the permanent members."⁷¹ The permanent members, according to Article 23, are China, France, Great Britain, The Soviet Union now Russia, and the United States.⁷² This means that the consent of all five members is needed for putting the enforcement machinery of Chapter VII into effect. Dissent by one of the permanent members is sufficient to make the execution of any enforcement measure impossible even when all the other fourteen members of the Security Council have consented. In other words, each of the permanent members has a veto with regard to any enforcement measure to be taken in pursuance of Chapter VII of the Charter. Thus the veto reintroduces into the system of law enforcement of the United Nations the principle of decentralization by making the operation of the system dependent upon the will of each of the permanent members.⁷³

Three important consequences of the veto are : firstly, the veto destroys the possibility of collective measures against the Big Five by granting them the right to veto in their favour not only the determination of a threat to or a breach of the peace or acts of

70. Norman D. Palmer and Howard C. Perkins, "International Relations : The World Community in Transition", Scientific Book Agency, Calcutta, 1976 p. 247.

71. Art. 27(3) of the UN Charter.

72. Art. 23 of the UN Charter.

73. Hans J. Morgenthau, n. 68 op. cit. p. 302.

aggression, but also to veto even a discussion of any measures of enforcement. Consequently, the two basic principles-the promotion of responsible international use of force and the prevention of arbitrary national use of force become ineffectual against the major powers. Secondly, while the United Nations cannot act against a Big Power aggressor, its enormous power would not be needed against a small aggressor. But even this capacity of the United Nations to act against small powers is not very probable, because in the present world of political alignments, no small power will dare commit, without the instigation or support or approval of a Big Power, a breach which may necessitate collective action. As a result, the small nations will find it advantageous to hide behind the protective shields of the Big Powers. Thirdly, under Article 51, the right of self- defence is limited in three ways : (a) it is available only against an armed attack ; (b) it is available only until the Security Council acts ; and (c) it does not affect the authority and power of the Security Council. In other words, Article 51 aims to keep the individualized and decentralized measures of self-defence under the control of collectivized enforcement through the Council. The Council may be disabled by the veto from exercising this control. This inability of the Council may mean either the failure of the United Nations Security System or its endorsement of the traditional decentralized security system.⁷⁴

These weakness of the United Nations system of collective security were made obvious by their application to the aggression of North Korea against South Korea in June 1950. The Security Council was able to apply the collective security provisions of the Charter against North Korea only by virtue of the fact that the Soviet Union had absented itself temporarily from that body and, hence, could not veto the relevant resolutions. With the return of the Soviet Union to the Security Council, the General Assembly was called upon to carry the burden of organizing the collective

74. M.V. Naidu, n. 7 op. cit. pp 37-39.

action of the United Nations. The functions of the General Assembly with regard to measure of collective security are limited by Articles 10 and 18 of the Charter to making recommendations to the member states by a two-thirds majority. It is the nature of a recommendations to leave it to the discretion of the addressee whether or not he wishes to follow it. Hence, measures of collective security, taken by virtue of such recommendations, are completely decentralized.⁷⁵

With the failure of Security Council to act the General Assembly, the second important organ of the U.N., came into prominence for the maintenance of international peace and security. This development was gradual and reached its climax with the adoption of the Uniting For Peace Resolution of November 3, 1950.⁷⁶

The plan of this resolution was first outlined by the U.S. Secretary of State, Dean Acheson, before the General Assembly on September 20, 1950 for strengthening the collective security system to enable the U.N. to maintain international peace and security.⁷⁷ The Resolution No. 317(v) of November 3, 1950 was sponsored by Canada, Philippines, Turkey, Uruguay and U.K. and was adopted by the General Assembly.⁷⁸ The main features of the plan are :

75. Hans. J. Morgenthau, n. 68 op. cit. pp 304-5.

76. U.N. Doc. A/1775 of 1950.

77. General Assembly, Official Records, 5th Session, 279 meeting September 20, 1950, pp 23-27. Also in Department of State Bulletin, Vol. XXIII, No. 587, October 2, 1950, pp 523- 529.

78. Thomas M. Frank, Who Killed Art. 2(4), American Journal of Interational Law, 64, October 1970 pp. 809-38. See also, the U.N. Resolution No. 317(v) of November, 3, 1950. After voting down the amendments proposed by the Soviet Union, the General Assembly adopted the report of the First Committee 52 votes to 5, with 2 abstentions, see General Assembly Official Records, 5th Session 302nd meeting (November 3, 1950) pp 345-347.

1. The resolution provides that if the Security Council because of the lack of unanimity of permanent members fail to exercise its primary responsibility for the maintenance of international peace and security in any situation of threat to peace, breach of peace or act of aggression the General Assembly shall consider the matter immediately with a view to make appropriate recommendations to members for collective measures including use of force when necessary to maintain or restore international peace and security.

2. If the General Assembly is not in Session it may be called an emergency special session within 24 hours either on the request of any seven members⁷⁹ of the Security Council or by a majority of the members of the U.N.

3. It asked all member states to maintain in their armed forces special elements which could be made available for United Nations service on call of the Security Council or the General Assembly.

4. The Resolution establishes a Peace Observation Commission consisting of 14 members to observe and report on the situation to the Security Council and the General Assembly in any area where international tension exists and the continuance of which is likely to endanger the maintenance of international peace and security.

5. The Resolution also establishes a 14 member Collective Measures Committee to study and reports on methods which might be used to strengthen international peace and security in accordance with the purposes and principles of the Charter.

As a matter of fact, it is a very comprehensive resolution having three important parts. Resolution A covers the points

79. Now 9 : After the 1965, Amendment of the Charter.

enumerated above. Resolution B urged the Security Council to "desire measures for the earliest application of Articles 43, 45, 46, and 47 of the Charter regarding the placing of armed forces at the disposal of the Security Council by the states members of the United Nations and the effective functioning of the Military Staff committee. Resolution 'C' recommended that the permanent members of the Security Council "meet and discuss, collectively or otherwise all problems which are likely to threaten international peace and hamper the activities of the United Nations, with a view to their resolving fundamental differences and reaching agreement in accordance with the spirit and letter of the Charter. Under Section D of the Seven-Power draft resolution, a Collective Measures Committee would report to the Security Council and to the General Assembly on the whole problems of collective security.

All members were invited to survey their resources in order to determine the nature and scope of the assistance they would be able to offer in support of any recommendation of the Security Council or General Assembly. The Secretary General was requested to appoint a panel of military experts to remain available for advising members on technical matters related to the organization and training of military units for the U.N. service.⁸⁰

The General Assembly has in essence through this resolution asserted its right to make determination of the situation of threat

80. See Dr. Subhas C. Khare, n. 2 op. cit. p. 182. Norman D. Palmer and Howard C. Perkins, op. cit. p. 249 ; 348. Hans. J. Morgenthau, n. 68, op. cit. p. 305. For the detailed study of above Resolution see, General Assembly, Official Record, 5th Session, First Committee, 354th meeting October 9, 1950, pp. 63-65, and 357th meeting Oct. 10, 1950, pp. 80-86. General Assembly, Official Record, 5th Session, 299th meeting November 1, 1950, pp 291-355, 301st meeting, November 2, 1950, pp. 324-335, and 302nd meeting, November 3, 1950, pp. 341-343.

to peace, breach of peace and act of aggression when the Security Council fails to perform its primary responsibility. The preamble of the resolution declares that the primary responsibility for the maintenance of international peace and security rests with the Security Council and that its failure to act does not relieve members of their obligations or U.N. of its responsibility. The General Assembly the main organ and entrusted with the task of overall supervision of the working of the Charter has the power and the responsibility to act in such a situation, for the maintenance of international peace and security.⁸¹

The legality of the power of the General Assembly as expressed in the resolution was challenged by the socialist bloc. The ground of attack was that the resolution creates a system of collective security contrary to the express provisions of the Charter as it allows General Assembly to take action. The Charter has given the responsibility for the maintenance of international peace and security to the Security Council and has made special provisions in Chapter VII for meeting the situation. The General Assembly has been assigned only hortatory powers and has been prohibited in Art. 11(2) to take action. It is only the Security Council that can take action. The International Court of Justice in its advisory opinion in Expenses Case has accepted the legality of the power of the General Assembly under its residual responsibility for the maintenance of international peace and security.⁸²

The Uniting for Peace Resolution was a conscious effort to develop and implement the security provisions of the United Nations Charter. It "was clearly put forward as a device for making the United Nations a Collective Security System."⁸³ Since its

81. Dr. Subhas .C. Khare, n. 2 op. cit. p. 183.

82. Ibid, p. 183.

83. Inis L. Claude, Jr., "Power and International Relations" Random House, New York 1962, p. 167.

adoption, more attention has been given to problems of implementation than even before ; in this sense it has indeed been a major landmark in the progress toward an effective collective security system. The Peace Observation Committee is ready to function as needed ; some of its members have been given specific assignments. The Collective Measures Committee has made some significant reports, which have been carefully considered by the General Assembly and which have indicated areas for further exploration. The Assembly itself has passed a resolution on collective security as a result of its consideration of the first report of the committee, and has instructed the committee to continue its work. Nothing of any importance has been done to carry out Resolutions B and C of the Uniting for Peace Resolution.⁸⁴

The development in the organizational field of U.N. made by this resolution has been appreciated by a number of juristic and large majority of states. Cohen V. Benjamin has regarded it as a great constitutional landmark in the development of Charter.⁸⁵ Ruth. B. Russel has viewed it as an effort to rectify Council's inability to act by providing Assembly's supervision of enforcement action under its recommendatory powers.⁸⁶ Goodrich and Simons view it as an attempt by the General Assembly to exercise its residual responsibility.⁸⁷ A number of other jurists have regarded the resolution as a design to meet the breakdown of the collective

84. Norman D. Palmer and Howard C. Perkins, n. 70 op. cit. p. 250.

85. Cohen V. Benjamin, "The U.N. Constitutional Development : Growth and Possibilities", Cambridge, 1961 p. 18.

86. Ruth. B. Russel, "Changing Pattern of Constitutional Development of International Organization", in International Organization, Vol. XIX, 1965. p. 414.

87. Leland M. Goodrich, and Anne P. Simons, "The United Nations and the Maintenance of International Peace and Security", Brookings Institutions, Washington D.C., 1955, p. 345.

security system of Chapter VII under strain of hostile alignments within the U.N.⁸⁸

The adoption of the Uniting for Peace Resolution was considered a development of great significance at the time since it seemed to involve the assumption by the General Assembly of a responsibility which many had hitherto considered to belong exclusively to the Security Council. Clearly, it was intended by the United States and its principle supporters that a procedure should be available by which the membership of the United Nations could be rallied to take collective measures—including military measures, if necessary—against a permanent member or another state enjoying the support of a permanent member. In effect, what they sought was the revival of something comparable to the League's collective security system with the General Assembly acting as the legitimizing organ.⁸⁹

88. Clyde Eagleton, "The Aims and Structure of U.N.", Yale Law Journal 1945-46, 55, p. 974. Quincy W. right, Accomplishments and Expectations of the World Organization, 55, Yale Law Journal p. 870 ; G. Kale, 'The Enforcement of Security' 55 Yale Law Journal p. 1081 ; E.M. Borchard, "The Impracticability of Enforcing Peace", 55 Yale Law Journal, p. 966.

89. Leland M. Goodrich, n. 12, op. cit. p. 43.

CHAPTER IV

THE DELIMMA OF APPLICABILITY : CHALLENGE AND RESPONSE

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Collective Security meets its most severe test when confronted by an overt or covert aggression committed in violation of community norms. The world's first peacekeeping arrangement, the League of Nations, proved unable to meet these challenges when made by great powers (Japan, Italy, Germany, and the Soviet Union), resulting in the collapse of the League Security System.¹ Examples of United Nations peace-keeping activities are fairly numerous, but collective security theory has been rarely applied in United Nations practice.² The United Nations in 1950 undertook the world's first collective security action involving military sanctions when it called upon members to contribute forces for action against North Korea.³

In this Chapter the functioning of United Nations regarding some major collective security enforcement activities from Korean War and prior to Gulf War has been discussed and an effort has been made to find out that to what extent UN has been able to apply the collective security related provisions of Charter in dealing with situations involving a threat to international peace and security.

The Case of Korea (1950)

The most notable flurry of active enthusiasm for the principle

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1. Jack C. Plano, Roy Olton, "The International Relations Dictionary", ABC Clio, Inc. Riviera Campus. Alameda Padre Serra, California, USA, 1988, p. 335.
 2. A. Le Roy Bennett, "International Organisation : Principles and Issues", Prentice-Hall Inc., Englewood Cliffs, New Jersey, 1977) p. 138.
 3. Jack C. Plano, Roy Olton, n. 1, p. 335.

of collective security in the post-war era came in response to the armed hostilities between the two parts of Korea that ensued in June 1950. That conflict brought forth a collective military action by the leading powers of the non-Communist world and conducted in the name of the United Nations. This was one of the most important events in the history of the international organisation and had far-reaching implications.⁴

The legendary beginning of Korean history dates from 2545 BC. Geographically and historically, Korea occupies the heart of the strategic triangle of North Asia, with Siberia on one side, China on another and Japan on the third. Its advantageous position in the Pacific had attracted the envious attention of powerful neighbours which explains why it was under Chinese Suzerainty for centuries. Later Japan had to fight against China and Russia, formally to annex Korea as part of the Japanese Empire on August 15, 1910.⁵

From 1910 down to Pearl Harbour, there was no inclination on the part of other Great Powers to challenge Japan's position in Korea. A change came, however, once Japan became an active belligerent on the side of Germany and other Axis powers.⁶ During the Second World War, President Roosevelt, Generalissimo Chiang and Prime Minister Churchill at the Cairo Conference in December, 1943 and Potsdam in July 26, 1945, guaranteed the reestablishment of Korean independence.⁷ But in February 1945, it was reported that a 'Secret agreement' had been made between the U.S.A., the UK and the USSR, which allowed the division of

4. K.P. Saksena, "The United Nations and Collective Security," D.K. Publishing House, Delhi, 1974, p. 82.

5. Francis Parakatil, "India and United Nations Peace Keeping Operations", S. Chand & Co. (Pvt.) New Delhi, 1975 p. 45.

6. K.P. Saksena, n. 4, p. 83.

7. L. Gordenker ; "The United Nations and the Peaceful Unification of Korea", : M. Nishoff, The Hague 1959 p. 1.

the Country into two ; one half for the Russians and the other for the Americans.⁸ However, on August 8, 1945 the Soviet Union declared war on Japan and occupied the North of the 38th Parallel. Later, on September 8th the United States' forces accepted the surrender of the Japanese forces South of that Une. Since then, Korea is divided into two parts and occupied by two major world powers. Although the 38th Parallel was supposed to be a mere military line, it gradually became a virtually permanent political dividing line.⁹

In December 1945 the Council of Foreign Ministers, meeting in Moscow, agreed in principle to establish a 'provisional Korean democratic government' for a United Korea. A joint commission was to be established, consisting of representatives of the US and Soviet Commands, to prepare proposals in consultation with democratic parties and organisations in Korea. Meanwhile there would be a four-powers trusteeship for the country, to be held by the United States, the Soviet Union, Britain and France.¹⁰

The proposal for trusteeship, implying a kind of colonial tutelage, was strongly resisted by many Korean politicians in the South ; and the United States subsequently declared that this proposal need not be implemented if a viable and representative Korean government could be established. This view was contested by the Soviet Union, which continued to attach importance to the trusteeship idea. For nearly two years inconclusive negotiations proceeded between the US and Soviet occupation authorities in the two zones about the future government of the country. A Joint

8. Col. D. Portway, "Korea—Land of morning Calm", G.G. Harrap, London 1953, p. 44.

9. Francis Parakatil, n.. 5 op. cit. p. 46.

10. Evan Luard, "A History of the United Nations : The Years of Western Domination". (1945-55) Vol. I, The Macmillan Press Ltd., Hamshire and London, 1982 p. 230.

Commission was set up to assist in this process but was frustrated by a total conflict of views. The Soviet Union held that any groups opposed to the Moscow Agreement and the trusteeship proposal had no right to be given a voice. The United States in reply proposed that elections should be held separately in the two zones ; representatives from each zone would then come together in numbers proportionate to population (the population of the South was twice that of the North) to establish a provisional government for a united Korea. But the Soviet Union wanted the provisional assembly to be appointed, with equal numbers from North and South, and with representatives only of those parties which fully supported the Moscow Agreement. The United States then suggested that the various proposals should be considered by a joint meeting of the four signatories of the Moscow Agreement. This in turn was rejected by the Soviet Union.¹¹

The crux of the disagreement stemmed from the fact that for both Russia and the U.S.A., Korea was of vital strategic importance. The Soviet Union wanted to ensure that no hostile power should have invasion bases within the reach of the Russian soil. As Japan was already in American possession, Soviet strategy was guided to mask Japan with a line of Russian held bases. These already included the military air bases in Siberia, the Kurile Islands and Sakhalin. To complete the circle and to consolidated her hold on the Asian mainland, Korea was essential. On other hand, Korea, for the U.S.A., was of great strategic value if it wanted to keep its hold in the Pacific, and to carry out its policy of containment against the Soviet block.¹²

Finally the Soviet Union proposed that all US and Soviet forces should be withdrawn by 1 January 1948, handing over to local

11. Ibid, p. 230.

12. K.P. Saksena ; n. 4, op. cit. p. 84.

authorities in each zone, and so in effect perpetuating the division of the Country. The United States was not unwilling to withdraw its forces under reasonable safeguards, since the Joint-Chiefs-of-Staff regarded the commitment in South Korea as both a military and a political liability. But it was not yet willing to renounce all hope of eventual reunification.¹³

When Soviet-American negotiations on Korea were dead locked, the United States, on September 17, 1947, referred the Korean problem to the U.N. General Assembly.¹⁴ On 17 September, Secretary of State Marshall declared to the Assembly that it now seemed evident that "further attempts to solve the Korean problem by means of bilateral negotiations will only serve to delay the establishment of an independent united Korea..... Although we shall be prepared to submit suggestions as to how the early attainment of Korean independence might be effected, we believe that this is a matter which now requires the impartial judgment of the other members. We do not wish to have the inability of two powers to reach agreement delay any further the urgent and rightful claims of the Korean people to independence."¹⁵

In the eyes of the United States, the advantage of this initiative was that she might now be able to mobilise world opinion on her side on the issue. In the eyes of the Soviet Union this was precisely its defect. Gromyko declared that, as a matter resulting directly from the war, the question was not one for the U.N. ; the great powers had already laid down the lines of a solution in the Moscow

13. H.S. Truman, 'Memoirs' New York, 1965 Vol. II, p. 325.

14. U.N. Doc. A/BUR/85, September 17, 1947.

15. See the address delivered by U.S. Secretary of State George. C. Marshall on September 17 before the General Assembly, G.A.O.R., Plenary, 82nd Meeting, September 17, 1947, Vol. I, pp. 21-22.

Agreement and there was therefore nothing now for the UN to do.¹⁶

In the debate that ensued, both the contending parties reiterated their respective positions.¹⁷ In the Assembly's First Committee the US proposed that the occupying powers should hold elections in their own zones, under UN Supervision, by 31 March 1948, so as to establish, in due proportions, a single national assembly and a national government. This united assembly would establish its own security forces, after which foreign forces would be withdrawn. A United Nations commission would supervise the whole affair and report back to the Assembly. The Soviet Union proposed simply the withdrawal of all foreign forces by the beginning of 1948, after which the people of Korea would be left to establish a Korean national government (a sure prescription for permanent division).¹⁸

The Assembly accepted the US proposals with only minor modifications. The Soviet Union had proposed that representatives from both North and South should take part in the UN discussions themselves. The United States therefore modified her proposals so that the UN commission might arrange for the participation of Korean representatives, so long as these were genuinely elected and not 'mere appointees of the military authorities in Korea'.¹⁹ On November 14, 1947, by a vote of 43 to 0, with 6 abstentions, the General Assembly adopted a U.S.-sponsored resolution creating a temporary commission on Korea to facilitate establishment of a Korean national government, through

16. See the Soviet Union's Representative, Mr. Gromyko's statement before the General Assembly, G.A.O.R., Second Session, Plenary, Vol. II 111th Meeting, pp. 823-32.

17. See the Summary of the General Assembly discussion in Yearbook of the United Nations 1947-48, pp. 81-88.

18. Evan Luard ; n. 10, op. cit. pp 231-32. See also K.P. Saksena, n. 4, op. cit. pp 84- 85.

19. Ibid, p. 232.

nation-wide elections, which were to be followed by withdrawal of all occupation forces.²⁰ The Soviet resolution, concerning simultaneous evacuation of the U.S. and Soviet troops from Korea at the beginning of 1948, failed of adoption, having obtained 7 votes to 34, with 16 abstentions.²¹

The Soviet Union adopted a 'negative attitude' towards the Temporary Commission and refused it permission even to enter North Korea. Consequently, the Commission was authorized to implement the original resolution "in such parts of Korea as were accessible to the commission."²²

Three successive United Nations Commission on Korea were established after the resolution of 14 November 1947. They were the UN Temporary Commission on Korea (UNTCOK), UN Commission on Korea (UNCOK-I), and the UN Commission on Korea (UNCOK-II). Generally speaking, 'the aim of all three commissions was to secure the unification of Korea under an independent Government by peaceful means.'²³

As a first step towards a reunification of Korea, UNTCOK concentrated on a general election. But the refusal of the USSR and of the authorities in the northern zone to co-operate meant that the commission had to be satisfied with observing the election in all accessible parts of Korea, i.e., only in South Korea.²⁴ The temporary commission, announced that it would observe elections not later than 10 May, 1948. General Hodge, the US military commander in South Korea, subsequently announced that election

20. General Assembly Resolution 112(II), November 14, 1947.

21. G.A.O.R., Second Session, Plenary, 112th meeting, Vol. II, p. 858.

22. See the resolution of Interim Committee of the General Assembly adopted on February 26, 1948 (U.N. Doc A/583, July 22, 1948).

23. Francis Parakatil ; n. 5, op. cit. p. 47.

24. Ibid : P. 47. The Members of UNTCOK : Australia, Canada, China, El Salvador, France, India, the Philippines, Syria and Ukrainian Soviet Socialist Republic.

would be held on 9 May 1948. This took place on May 10, 1948. The commission agreed to observe these elections and laid down certain elementary conditions, which it held should be observed. For the most part these were accepted by the U.S. military command. During the elections the commission interviewed US officials and Korean election officers and candidates, and travelled throughout the country.²⁵ In the elections, which were boycotted by quite a number of political groupings, there were as many as 134 parties participating.²⁶ Out of 200 deputies elected to the National Assembly, 170 were supporters of Syngman Rhee "favoured by landowners, police force, and the U.S.A."²⁷ On the basis of the commission's report to the effect that elections were held in "a reasonable degree of free atmosphere" and the results were "a valid expression of the free will of the electorate, "the newly elected Government, with Syngman Rhee as President, was recognized by the UN General Assembly on 12 December 1948 as the lawful government, having effective control and jurisdiction over that part of Korea in which the Temporary Commission observed elections.²⁸

Since the unification of all Korea had not been attained, after the election in December 1948 the General Assembly extended the commission on a more permanent basis (UNCOK-I). This Commission was to :

(i) "lend its good offices to bring about the unification of Korea and the integration of all Korean Security Forces in accordance

25. Evan Luard ; n. 10, op. cit. p. 235.

26. Second Part of the Report of the United Nations Temporary Commission (A/575/Add. 4), pp. 22-23 ; also see Korea : 1945-48, U.S. Department of State Publication 3305 : U.S. Government Printing Office, Washington, D.C. 1948.

27. F.L. Schuman, "International Politics", McGraw Hill, New York 1958 p. 220.

28. United Nations General Assembly Resolution 195 (III), 12 December 1948.

with the principles laid down by the General Assembly in the resolution of 14 November 1947 ;

(ii) Observe the actual withdrawal of the occupation forces and verify the fact of withdrawal when such had occurred ; and for this purpose, if it so desired, to request the assistance of military experts of the two occupying powers."²⁹

Meanwhile, in the North, the Soviet Union got established a government with Kim Il Sung as Prime Minister and on September 18, 1948, informed the United Nations that it would withdraw troops by the end of the year. Soviet troops left by December, except for a military training mission. On the other side, the United States withdrew its troops by July, 1949, except for a military training mission.³⁰

The establishment of new Governments representing conflicting ideologies only aggravated the already existing tension between the two parts. Each of the two Governments laid claim not only to being the only lawful Government in Korea, but also to being the lawful Government of all Korea. Border skirmishers, sabotage and riots in both parts were frequent.³¹

As the objectives of the Commission (UNCOK-I) could not be fully attained, the General Assembly on 21 October, 1949 established another commission (UNCOK-II) with the following objectives :

- (i) "to observe and report any developments which might lead to or otherwise involve military conflicts in Korea ;
- (ii) to be available for observation and consultation throughout Korea in the continuing development of

29. Ibid, 12 December, 1948. Members of UNCOK-I : Australia, China, El Salvador, France, India, the Philippines and Syria.

30. K.P. Saksena ; n. 4, op. cit. p. 86.

31. Ibid, p. 87.

representative Government based on the freely expressed will of the people, including elections of national scope."³²

This commission also could do very little in the unification of Korea. The aggression which followed in 1950 signified the complete failure of the United Nations' attempts to achieve unity in Korea by peaceful means.³³

During the early part of 1950 there were a series of small-scale incidents on the border between North and South. Statements on either side became increasingly warlike. In June, John Foster Dulles, foreign-policy adviser to the Truman administration, paid a visit to South Korea and gave assurances of U.S. support, both moral and material. He visited South Korean forces on the border and declared that 'any despotism which wages aggressive war dooms itself to unalterable disaster.'³⁴

At 1.30 p.m. on 25 June 1950, the South Korean Foreign Minister informed the U.N. Commission of a large-scale attack by North Korean forces across the border. A few hours later similar reports were sent by the Commission's observers on the border. The Commission immediately reported to the Secretary-General 'a serious situation developing, which is assuming the character of full-scale war and may endanger the maintenance of international peace and security.' It suggested that the Secretary General might wish to call together the Security Council. In a broadcast in South Korea, the Commission's Chairman appealed for an end to hostilities and offered the Commission's good offices in arranging a cease-fire.³⁵

32. United Nations General Assembly Resolution, 293 (IV), 21 October, 1949. Members of UNCOK-II are : Australia, China, El Salvador, France, India, the Philippines and Turkey.

33. Francis Parakatil, n. 5, op. cit. p. 48.

34. Evan Luard ; n. 10, op. cit. p. 239.

35. Ibid ; pp 239-40.

At 3 a.m. on 25 June (New York time), the US representative at the UN, Ernest Gross, called for a meeting of the Security Council to consider 'a breach of the peace or act of aggression' in Korea.³⁶ Consequently, an emergency meeting of the Council was scheduled for 2 o'clock the same day. At 3 p.m. the Council met.³⁷ The Soviet Union was at this time absent from the Council, having walked out in January over the issue of Chinese representation. This of course ruled out from the start the danger of a Soviet veto, and made it possible to contemplate resolutions in terms which would have been unthinkable if the Soviet Union had been present.³⁸

Addressing the Council, the Secretary General declared that the situation represented a serious threat to international peace, and it was 'the clear duty of the Security Council to take the steps necessary to re-establish peace.'³⁹ In the course of the discussion which ensued in the Security Council that afternoon, two draft resolutions were submitted : one by the representative of the United States, and the other by the representative of Yugoslavia. The Yugoslav draft was in keeping with the pattern of action which the Security Council had hitherto followed in situations involving armed hostilities. It called for immediate cessation of hostilities, the withdrawal of forces beyond the 38th Parallel, and for the two parties to state their respective cases 'before the Council. The draft resolution was rejected by 6 votes to 1 with 3 abstentions and one member (U.S.S.R.) absent. The U.S. draft resolution was adopted by 9 votes to 1, with one member absent. The resolution 82 of 25 June 1950, noted with grave concern the armed attack upon the Republic of Korea by forces from North Korea', called

36. U.N. Doc. S/1495, June 25, 1950.

37. U.N. Doc. S/1496, June 25, 1950.

38. Evan Luard ; n. 10, op. cit. p. 240.

39. U.N. Doc. S/1496, June 25, 1950.

for an immediate end to hostilities and the withdrawal of North Korean forces to the 38th parallel, and asked all members to render every assistance to the UN in the execution of the resolution and to refrain from giving assistance to North Korea. But this resolution did not permit the use of armed force.⁴⁰

The resolution contained two significant points : a reference to the "armed attack" and the determination that this was a breach of the peace. Equally significant was the fact that while determining the situation as a breach of the peace, Article 39 of the Charter was not mentioned as was done in the case of Palestine when such a determination was made. This way, the grounds were prepared for a kind of U.N. action which came two days later. At this stage, the Council did not explicitly commit itself to the taking of collective measures to restrain the aggression, nor did it call upon the members to intervene militarily. The measures recommended were of the nature as envisaged in Article 40 of the Charter-provisional measures to create conditions favourable to further action with a view to peaceful settlement, or, if that did not prove feasible, to assist the Council in deciding on what measures should be taken to repel the aggression and restore international peace and security.⁴¹

On the same day, 25 June, President Truman, after consulting with defence and State Department advisers, sent naval and air forces to South Korea to protect the evacuation of US civilians there. He decided to supply arms to South Korea, and moved the Seventh Fleet from the Philippines to the Taiwan Straits. On the following day he went further. He sent naval and air units to give active support to South Korea ; and he announced that the Seventh Fleet would be used to neutralise Taiwan (in effect to

40. U.N. Doc. S/1501, June 25, 1950, pp. 21-22.

41. K.P. Saksena ; n. 4, op. cit. p. 88.

defend it against a possible invasion by communist forces then being massed on the mainland coast). Announcing these measures on the following day, Truman justified them on the basis of the Security Council resolution. This required a somewhat ingenious interpretation of the resolution, which had not asked for the dispatch of armed assistance to South Korea but had called on all members to give every assistance in the execution of the resolution—that is, it seemed, to assist in bringing about a cease-fire. On 26 June, the UN Commission in Korea reported that there was no signs that the North Koreans were heeding Security Council resolution ; and on the following day it reported that they seemed to be carrying out a 'well planned, concerted and full-scale invasion of South Korea.'⁴²

As a result on June 27, the Security Council met again. The Security Council, however, went along with the United States' plea that the situation required military action by the United Nations. It adopted a U.S. draft resolution by a vote of 7 to 1 (Yugoslavia) with one member absent (USSR), and two members (Egypt and India) not participating in the voting. By the same margin of vote, it rejected a Yugoslav draft resolution for a renewal of the cease-fire call and mediatory efforts by the Council.⁴³

The resolution 83 of 27 June 1950, adopted declared "that urgent military measures are required to restore international peace and security" and recommended that member-states "furnish such assistance to the Republic of Korea as might be necessary to repel the armed attack and to restore international peace and security in the area."⁴⁴ The resolution was not, however, explicitly based on Chapter VII of the Charter (dealing with

42. Evan Luard, n. 10, op. cit. p. 241.

43. S.C.O.R., Fifth Year, No. 16, p. 14.

44. U.N. Doc S/1511, June 27, 1950, p. 23.

breaches of the peace and acts of aggression), and did not 'decide' what action should be taken by members-a decision which would have had mandatory force. It represented in effect only a recommendation to members.⁴⁵ The Council "recommended under Article 39, rather than ordering action under Article 41-42, for which it was unprepared."⁴⁶

The Soviet Union and the other four Communist Members of the United Nations denounced the action of the Security Council as "illegal".⁴⁷ Other member nations-51-out of 59-supported the Council's resolution. However, only 16, besides the U.S.A., sent their combat forces to Korea. The burden of resisting the North Korean attack was mainly borne by the United States which supplied nine-tenths of the military forces and equipment and suffered nine-tenths of the casualties.⁴⁸ This was followed, two days later, by a statement by the U.S. Secretary of State, Mr. Dean Acheson, that the collective action was "Solely for the purpose of restoring the Republic of Korea to its status prior to the invasion from the North and of re-establishing the peace broken by that invasion."⁴⁹

The problem arose of how the U.N. was to organise the

45. Evan Luard ; n. 10, op. cit. p. 242.

46. Ruth B. Russel ; "United Nations Experience with Military Forces : Political and Legal Aspects", Brooking Staff Paper : The Brookings institution, Washington D.C. August 1964, p. 25.

47. U.N. Doc. S/1517, June 29, 1950. See also Yearbook of the United Nations 1950.

48. 17 members participated in the Force : Australia, Belgium, Canada, Colombia, Ethiopia, France, Greece, Luxemburg, the Netherlands, New Zealand, the Philippines, the Republic of Korea, Thailand, Turkey, South Africa, the UK and the U.S. (U.N. Doc. S/2897, 8 January 1953). For tables of Individual Contribution of Member States See Yearbook of United Nations, 1950, pp. 226-28 ; and Yearbook of United Nations 1951, pp. 249-51.

49. U.S. Department of State Bulletin, XXIII July 10, 1950, p. 46, speech to American News Paper Guild, 29 June, 1950.

command of this motley force. The Secretary-General proposed that the United States should have the main responsibility for directing it, with the assistance of a co-ordination committee. But this was not accepted by the United States.⁵⁰ Eventually, on 7 July, the Security Council passed resolution 84, originally put forward by Britain and France, recommended that "all members providing military force and other assistance..... make such forces available to a unified command under the U.S." It also requested the U.S. to designate the commander of such forces and also course of operation against North Korea along with various flags of all participant nations. It is assumed that these resolutions were adopted unanimously since the Soviet Union was boycotting the Security Council at that time. The force was authorised to use the U.N. Flag.⁵¹ On 8 July, President Truman announced that General Douglas MacArthur had been appointed by the US Government as commander of the U.N. Forces.⁵² The US provided 50% of the ground forces, 86% of the ships, and 93% of the air forces. On 15 July, South Korean forces were also placed under General Mac Arthur's command.⁵³

This was a somewhat extra ordinary arrangement. General MacArthur was now under the authority both of the Security Council and of the U.S. Government. He remained U.S. Commander-in-Chief, Far East, and Supreme Commander Allied Forces in Japan. He reported regularly to the U.S. President and Chiefs-of-Staff and received orders from them. Reports to the U.N. were sent in the first place to Washington and were amended and

50. Evan Luard ; n. 10, op. cit. p. 243.

51. U.N. Doc. S/1598, July 7, 1950. GAOR, V, Suppl. 2 (A/1361), 1950, pp. 25-26. The vote was 7-0, Yugoslavia abstaining this time along with India and Egypt.

52. Evan Luard; n. 10, op. cit. p. 244.

53. David J. Whuttaker, "United Nations in action", Biddless Ltd Guildford and Kings, Lynn, England, 1995, p. 42.

edited by the U.S. Government before being presented by them to the Security Council. There was no suggestion, as with subsequent peace-keeping forces, that the U.N. Commander should report direct to the Security Council or the Secretary-General.⁵⁴

On 31 July the United States introduced a new resolution in the Security Council, called upon "all states to refrain..... from action which might lead to the spread of the Korean conflict to other areas and thereby further endanger international peace and security."⁵⁵ The next day, however, the Soviet Union decided to return to the Council. By mischance it was her turn to be President. This may indeed have been the fact that caused her to return. For the following month, during thirteen meetings devoted to the question of Korea and related matters, Gromyko, the Soviet representative, used every possible device his position made available to frustrate and disrupt effective discussion of the issue. He proposed an agenda of his own, voted against all attempts to change it, refused to implement procedural decisions of the Council (for example, to seat a representative of South Korea), and so on. By these means he made it impossible to vote on the proposed US resolution for more than a month. Only after the British delegate (Sir Gladwyn Jebb) took over the presidency in September did the resolution finally come to a vote. Though it then obtained an overwhelming majority in its support (9-1, with 1 abstention), it failed, to no one's surprise, because of a Soviet veto-similarly, a number of Soviet resolutions condemning UN action in Korea, calling for representation of North Korea or the Korean people, and demanding the transfer of the China seat to the Chinese People's Republic were overwhelmingly defeated.⁵⁶

54. Evan Luard ; n. 10, p. 244.

55. Year book of the United Nations, 1950, p. 234.

56. Evan Luard ; n. 10, pp 244-45.

In autumn 1950 the whole purpose of the UN was in Jeopardy as determined attacks by North Korea hit home, breaching defences and, in September, even capturing Seoul. The situation that month was only retrieved by General MacArthur daringly launching an amphibious operation behind the Western flank of the North Koreans, which forced them to pull back. MacArthur, flushed with victories, determined to push northwards. His objective in crossing the 38th parallel went beyond non-political intervention : from a defensive action to restore the status quo, it became an offensive move to bring about the reunification of Korea. It had never been expected that UN forces would go beyond the 38th parallel. Previously, in June, UN Resolutions, and indeed statements from the White House, had limited UN intervention to restoring South Korea to its status prior to the invasion and to the re-establishment of the violated peace. The mere possibility of such a bold move would change the objectives and conduct of the whole operation to a drastic and unjustifiable degree.⁵⁷

In mid September the General Assembly had listened with growing apprehension to an American case for making the most of a stand on the "threshold of victory " and thus working for unification. A Western resolution in September 1950 called for the securing of stability and representative government "throughout Korea", this was seen by many as explicitly authorizing a move across a tenuous line of demarcation. Quickly, a counter-resolution from Eastern Bloc states indicted any frontier violation and demanded the pulling-back of the UN force to allow all-Korean elections under UN auspices. The Western majority in the General Assembly succeeded in getting their Resolution accepted, clearly aware that the Security Council's enforcement power was being bypassed.⁵⁸

57. David J. Wluttaker ; n. 53, op. cit. p. 42.

58. Ibid, PP 42-43. See also Evan Luard ; n. 10, op cit. p. 247.

Speaking in the first committee on September 30, 1950, in support of the eight-Power resolution which would permit U.N. forces to occupy the whole of North Korea, the U.S. delegate called upon the United Nations not to permit the aggressor "to have refuge behind an imaginary line because that would re-create the threat to the peace of Korea and of the world." He then asked the United Nations to determine "the political aspect of the question whether the artificial barrier of the 38th Parallel should remain removed, and whether Korea should be united now....." and expressed the view that "the barrier which had divided North and South Korea had no basis either in law or in reason."⁵⁹

Again, the majority of the U.N. membership went along with the views of the United States and on October 7, the General Assembly, by a vote of 47 to 5, with 7 abstentions, adopted an ambiguously worded resolution with stated objectives of 'creating conditions of stability throughout Korea' and of establishing "a unified, independent and democratic government."⁶⁰ Some delegations, besides the Soviet bloc, which regarded the collective action in Korea illegal, called the resolution unwise. The Indian delegate, for one, made a strong plea against the U.N. forces crossing over into the North. He called for magnanimity in the hour of victory and expressed the view that faith in the United Nations would be seriously impaired if it were even to "appear to authorize unification of Korea by the use of force" since the U.N. itself had gone into Korea to prevent North Korea from using force for the unification of Korea.⁶¹

59. G.A.O.R., Fifth Session, First Committee, Summary Records, 346th Meeting, Vol. I, pp 13-14.

60. General Assembly Resolution 376(V), October 7, 1950. On 7 October 1950 UNCURK (UN Commission for the Unification and Rehabilitation of Korea) was established by General Assembly. Its Members were : Australia, Chile, the Netherlands, Pakistan, the Philippines, Thailand and Turkey.

61. G.A.O.R. Fifth Session, Plenary, 294th Meeting, October 7, 1950.

As soon as the Assembly resolution had been passed, on October 9, General MacArthur called on the North Koreans to lay down their arms. Failing this he would 'at once proceed to take such military action as may be necessary to enforce the decrees of the United Nations'. Receiving no reply, UN forces crossed the border.⁶²

China too made a distinction between South Korean and other UN forces. Since the beginning of the war China had made a number of communications to the U.N. On 6 July Chou En-lai had sent a telegram to the Secretary-General protesting against US intervention and aggression in Korea. On 20 August, when UN forces were beginning to be more successful, he warned that the Chinese people 'cannot but be most concerned about the solution of the Korean question' and called for the withdrawal of all foreign troops from Korea. He demanded too the right of China to participate in UN discussions, especially those which concerned the 'illegal US occupation' of Taiwan. On 29 September the Security Council decided to accept the request for Chinese representation in discussions of that question.⁶³

By this time the possibility of UN forces crossing the parallel was being discussed. On 30 September, in a speech to the People's Political Consultative Conference, Chou En-lai declared that the Chinese Government 'would not stand aside' if North Korea was involved. Three days later he directly warned the Indian ambassador in Peking that, if any UN forces, other than South Korean, crossed the border, China would feel obliged to intervene. These warnings were transmitted to the US and other governments, and were known before the Assembly vote. After the

62. See Doc. S/1883, appendix, S.C.O.R., Fifth Year, Supplement for September through December, 1950, p. 104.

63. Evan Luard ; n. 10, op. cit. pp 249-50.

Assembly had voted, an official Chinese Government Statement declared that 'the US invasion' of Korea menaced Chinese security, and China could not 'stand idly by.....The Chinese people loved peace but, in order to defend peace, they never will be afraid to oppose aggressive war.' As the UN forces crossed the border, Chinese forces massed on the Yalu River dividing Manchuria from North Korea.⁶⁴

The first week of November 1950 brought full-scale intervention by Chinese forces. Earlier exploratory probing of South Korean positions revealing defensive anxieties now gave way to a mass response to what Peking regarded as a deliberate drive north across the Yalu river. MacArthur's irresponsibility and Washington's mistaken assessments of the military and political significance of the new developments were to subject the Korean venture to nine months of bitter fighting and to a great deal of criticism from governments not deploying personnel in Korea. Disaster, in the fullest sense of that term, was only narrowly averted. China felt it was denied an ideological triumph in Korea, but in the eyes of the world was to stand tall in power and influence.⁶⁵

Further constitutional precedents were established in New York on 3 November 1950 when a special measure, the Uniting for Peace Resolution, was passed. This was to provide for recalling the General Assembly at short notice if the Security Council reached deadlock by veto. In that event the General Assembly itself could call for the use of force to deal with a situation judged to be endangering world peace. This provision was emphatically not in the UN Charter.⁶⁶

64. Ibid, p. 250.

65. Max Hastings in "The Korean War", Pan Books, London 1987, makes this point in the course of a detailed account of the whole operation.

66. David J. Wluttaker ; n. 53, op. cit p. 43.

The sudden change in the military events produced a shift in the attitude of many Member-States, including that of the United States.⁶⁷ The adoption by the General Assembly on December 14 of the resolution⁶⁸ sponsored jointly by 13 Asian Members represented a retreat from its October position to the more modest stand that military action should be restricted to the repelling of aggression, that once this condition had been achieved, military action at best should be terminated, and that the political conditions of peace and security in the area, including the unification of Korea, should be the subject of negotiations subsequent to the termination of hostilities.⁶⁹

These broad principles were reaffirmed in the suggestions which the Group of Three, established by the December 14 resolution, "felt constituted a reasonable basis for discussion" for bringing the Korean War to an end. It was also on these broad principles that after two years of hard bargaining the two sides agreed on an armistice in July, 1953.⁷⁰

It was the first time that the free nations of the world voluntarily united in action against aggression not directed against one of their members. It was also the first time that a United Nations Army was formed to fight under the UN banner and a UN Commander.⁷¹ Many now in Washington and certainly inside the UN building in New York agreed with the American General Omar Bradley that it was "the wrong war, at the wrong place, at the wrong time, and with the wrong enemy." The ideal of a unified Korea was a United Nations purpose ; it was not a war aim.⁷²

67. See the discussion of the question in G.A.O.R., Fifth Session, First Committee, Summary Records of Meetings (409th to 417th Meetings), Vol. I, pp. 401-53 and Ibid, Plenary (324th Meeting), Vol. I., pp. 653-54.

68. General Assembly Resolution 384(v), December 14, 1950.

69. K.P. Saksena ; n. 4, op. cit. p. 98.

70. Ibid, p. 98.

71. Francis Parakatil ; n. 5, op. cit. p. 49.

72. David J. Wluttaker ; n. 53, op. cit. p. 43.

It may Sound like quibbling to ask whether Korea was an example of "collective security." Obviously, the answer depends on the definition of the term. If one choosen to make collective security include every collective action undertaken for defensive purposes by a group of nations, then the Korean intervention by the United States and its associates falls under the term. As a matter of fact, it has become the habit of official spokesmen of our government to use the term in this way.⁷³

But legality of all such enforcement actions could always be challenged. The Korean case was not an exception to this. It has been argued that the "Korean operation was not carried out by UN forces but by forces of the States which contributed them."⁷⁴ It has been pointed out that it was the U.S. which took all decisions regarding the military operation. The commander received his orders from the U.S. and not from the U.N. Authorization to fly the UN flag and awarding of U.N. medals by the General Assembly did not necessarily make it a UN force. Contrary to this, some writers contend that since all action in Korea originated in the Security Council and because the General Assembly resolutions referred to these actions as UN actions and called the forces "UN forces" it is perfectly legal to call them as UN forces. Thus, they concluded that the US was merely acting as the executive agent of the UN forces in Korea. Thus both the sides present a strong argument. But one important fact to be noted is that the UN forces in Korea were authorized by the UN. Therefore, they did have legal validity.⁷⁵

73. Arnold Wolfers, "Discord and Collaboration : Essays on International Politics", The Johns Hopkins Press, Baltimore, 1962 p. 167.

74. Jericho N. Kola, "The United Nations, International Law and the Rhodesian Independence Crisis, New York, Oxford University Press, 1985, p. 147.

75. Gazi Ibdewi Abdulghafour, "United Nations role in the Gulf Crisis," Lancers Books, New Delhi, 1992, p. 51.

Viewed in this background provided by the American intervention in the Korean war on the supposed behalf of the United Nations, it is difficult to call the collective action in Korea an illustration of collective security. To begin with, of course, it appeared that the United Nations was going to act under its collective security system because it asked all its members to participate in that action against one particular aggressor-North Korea. Collective Security could have even operated successfully but for the intervention of communist China on the side of North Korea. That intervention, as Hans Morgenthau holds, and the indirect support of the Soviet Union to the aggressor completely transformed the character of the Korean war. Before that, the war could perhaps be called a collective security war because of the preponderant force that was expected to be used against a single aggressor-nation, namely North Korea. But with the intervention of China and the support of the Soviet Union, the Korean war which started as a collective security war became a traditional war.⁷⁶

Suez Crisis : 1956

The Suez crisis had its roots in a myriad of political and economic problems going back to several years. The immediate cause of the conflict, however, can be traced to two series of critical events-one relating to the Palestine dispute and the other to the Suez Canal-which had followed one another during the years 1955-56. These events had foreshadowed the coming crisis but the United Nations failed to take adequate steps in time and the situation deteriorated bringing the world to the brink of a global conflagration.⁷⁷

76. Mahendra Kumar, "Theoretical Aspects of International Politics." Shiv Lal Agarwal & Company, Agra, 1981, p. 418.

77. K.P. Saksena, n. 4, op. cit. pp. 152-53.

On July 26, 1956, President Abdul Gamel Naseer of Egypt nationalised the Suez Canal and closed it to international traffic.⁷⁸ On 13 October 1956 the Security Council was able to adopt unanimously a resolution setting forth these six principles for a peaceful settlement of the dispute : (i) There should be free and open transit through the canal without discrimination overt or covert ; (ii) The sovereignty of Egypt should be respected ; (iii) The operation of the canal should be insulated from the politics of any country ; (iv) the manner of fixing tolls and charges should be decided between Egypt and the users ; (v) a fair proportion should be allotted to the development of the canal ; and (vi) unresolved affairs between the Suez Canal Company and the Egyptian Government should be settled by arbitration with suitable terms of reference and suitable provisions for the payment of sums to be due.⁷⁹

In particular, no agreement could be reached on implementation. In the next fortnight tension steadily mounted, both between Egypt and the Anglo-French front, and between Jordan and Israel, whose complaints the Security Council heard on 19 October, without arriving at any decision. Then on 29 October, Israel launched an invasion of Egypt. The Security Council debate the following day was interrupted by news of an ultimatum presented by Britain and France to both combatants, threatening to intervene with force unless they stopped fighting and withdrew their forces to a distance of ten miles from the canal. The British justified their action by the impotence previously displayed by the Security Council.⁸⁰ The United States proposed

78. Dr. Usha Sud ; "United Nations and India : Saga of Co-operation," Vikas Publishing House Pvt. Ltd., New Delhi, 1996 p. 119.

79. S.C. Res. S/3675, 13 October, 1956.

80. H.G. Nicholas, "The United Nations as a Political Institutions" Oxford University Press, New York, 1971 p. 58.

in the Council a resolution ordering Israel to withdraw, and calling on all U.N. members to refrain from force or the threat of force. The voting on the resolution was 7-2-2 ; using her veto for the first time in U.N. history, Britain, supported by France, prevented its passage.⁸¹ Another draft resolution confined to a call for a cease-fire and for Israeli withdrawal was then introduced by the Soviet Union and again defeated by the Anglo-French veto.⁸² Britain and France neither obeyed nor flouted the resolution in toto, but replied they would stop their military action if a U.N. force would keep the peace until settlements between Jews and Arabs and satisfactory arrangements for the Canal were established and guaranteed.⁸³ Here the United Nations and the great design of collective security behind it seemed to have reached the end of road.

This action paralysed the Security Council and the British and French troops continued their aggression against Egypt. Soviet Premier Bulganin vioced the possibility of sending Soviet "volunteers" to restore peace in the Middle East. He also proposed a joint show of force by the U.S. and the Soviet Union in order to restore peace, however, this was rejected by President Eisenhower as "unthinkable".⁸⁴ The only course open was to call an emergency session of the General Assembly, and thus, the Uniting for Peace procedures was once again invoked. Both the Soviet Union and the U.S., took a condemnatory attitude towards the attack against Egypt, and asked for an immediate cessation of hostilities and withdrawal of armed forces.⁸⁵

81. The U.S. draft resolution (S/3710) Secured Seven votes. Britain and France voted against, Australia and Belgium abstained. U.N. Doc. 3/37/12, October 29, 1956.

82. The Russian draft (S/3713/Rev. 1), UNSCOR, 11th Session, 750 Mtg. Oct. 31, 1956.

83. H.G. Nicholas ; n. 80, op. cit p. 59.

84. John G. Stoessinger, "United Nations and the Super Powers", N.Y. Random House, 1977, p. 85.

85. Dr. Usha Sud ; n. 78, op. cit. p. 120.

The Security Council met again in an emergency session on October 31. Two very significant developments emerged from that meeting. Secretary-General Hammarskjöld, without passing judgment on the tripartite attack, called for compliance with the solemn obligations which member states undertook when they signed the Charter and indicated that he intended to use his office to uphold the principles of the Charter.⁸⁶ That was the beginning of a dynamic role for the Secretary General, in the crisis, which greatly influenced the course of events towards restoration of the status quo. The last sentence of Hammarskjöld's statement implied a "threat" to resign "if the members (were) to consider that another view of the duties of the Secretary-General would better serve the interests of the organization."⁸⁷ The effect of his stand was swift and dramatic. Immediately, the entire Security Council, including French and British delegates, expressed trust and confidence in him.⁸⁸

The second development, whose significance transcended the crisis, was the assertion in practice for the first time that the General Assembly should step in, when the Security Council was deadlocked in "exercising its primary responsibility for the maintenance of international peace and security." By adopting the Yugoslav draft resolution, the Council decided to call an emergency special session of the General Assembly as provided in General Assembly Resolution 377 A(V) of November 3, 1950, "in order to make appropriate recommendations."⁸⁹ Within 24 hours of this decision, the General Assembly began its first emergency special session at 5 p.m. on November 1, with a break of a few hours it continued its session until 4.20 a.m. the next day.

86. S.C.O.R., Eleventh Year, 751st meeting : October 31, 1956, p. 1.

87. Ibid, p. 2.

88. Ibid., pp. 7-15.

89. Security Council Resolution 119 of October, 31, 1956 (S/3721).

The Assembly debate was clearly indicative of a compromise course between actions of "pure coercion" and "pure consultation."⁹⁰ The United States again took the lead in introducing a draft resolution which called for a cease-fire and withdrawal of all armed forces behind the 1949 armistice line and recommended that all member-states refrain from introducing military goods into the area. There was no condemnation of the invading parties. Indeed, the whole resolutions was so carefully worded as not to reflect any kind of value judgement on any of the parties involved in the crisis.⁹¹

Finally on 3 November, Lester Pearson of Canada, introduced a draft resolution, requesting the Secretary General to submit a plan within forty-eight hours for the creation "with the consent of the nations concerned "an emergency international force" to secure and supervise the cessation of hostilities. The General Assembly approved the Canadian Plan.⁹² On 5th November the Assembly learnt that Britain and France had agreed to cease hostilities at midnight on 6-7 November and to withdraw, provided a U.N. force could take over.⁹³ The same day of November 5, 1956, the General Assembly set up a United Nations Emergency Force (UNEF) 'to secure and supervise the cessation of hostilities.'⁹⁴ On 7th November the Assembly approved the detailed proposals of the Secretary-General concerning the force and eight days later, on 15th November, the first contingent of the United Nations Emergency Force (UNEF) landed in Egypt. They could have arrived on the 10th, but Egypt delayed the granting of permission for them to land. The buildup continued until by mid-December 5,000

90. K.P. Saksena, n. 4, op. cit. p. 178.

91. General Assembly Resolution 997 (ES-1), November 2, 1956.

92. John G. Stoessinger, n. 84, op. cit. p. 86.

93. H.G. Nicholas, n. 80, op. cit. p. 59.

94. Yearbook of United Nations, 1956, p. 36.

men were deployed, drawn from ten countries, none of them Great Powers and all 'neutrals' in the dispute. On 3rd December, under mounting pressure from the General Assembly, as well as from outside, France and the United Kingdom announced that they would withdraw their troops and on 22nd December the last Anglo-French forces left Egypt. It took longer to get the Israelis out of Sinai ; not until 1 March, 1957 did Israel announce full withdrawal, and then only on condition that UNEF patrol the armistice demarcation line in Gaza and on a rather vague American promise to uphold free navigation in the Gulf of Aqaba. Meanwhile, in response to an Egyptian request, a U.N. salvage force was at work clearing the canal, a task it completed by the end of April 1957.⁹⁵

The U.N.E.F. constituted in November 1956, was an important contribution to the "international organization's technique of peace keeping." It was the "prototype of a small police force not only for the results achieved, but also for hopes aroused that the "spirit" of U.N.E.F. has spread.⁹⁶ The U.N. has resorted to this method of peace-keeping in other situations too, which followed the crisis in the Middle East.⁹⁷ The U.N.E.F. was a neutral agency consisting of units contributed by neutral and middle powers on a voluntary basis. It was not a combat force but acted as a defusing agent. It entered Egyptian territory with its consent, and left when Egypt requested its withdrawal in 1967. It was financed through assessments in respect of a special account. From its inception in 1956, to the end of its mission in June 1967, the total cost of operation was \$ 214, 249, 000 (however the financial cost was

95. H.G. Nicholas n. 80, op. cit. p. 59.

96. Gabriella E. Rosner ; "The United Nations Emergency Force", Columbia University Press, New York 1963, p. 2.

97. John G. Stoessinger, n. 84, p. 90.

considerably reduced by the absorption by the countries providing contingents of varying amount of the expenses involved).⁹⁸

The legal basis for the creation of the Force was uncertain. The communist countries, which abstained in the vote setting up the force, said that the use of any type of United Nations force constituted enforcement action, which could only be taken by the Security Council. In the Expenses case, the International Court of Justice said that the operations of U.N.E.F. did not constitute enforcement action because they were not directed against any state without that state's consent.⁹⁹ But it is one thing to show that there is no provision in the Charter forbidding the creation of the Force ; it is another thing to find a provision authorising its creation. The International Court suggested that the force might have been based either on Article 11 or on Article 14 of the Charter.¹⁰⁰ The trouble with these Articles is that they merely empower the General Assembly to recommend measures to be taken by somebody else ; they do not empower it to take measures. But the practice of the General Assembly suggests that the fact that the General Assembly can only make recommendations does not prevent it setting up subsidiary bodies to carryout those recommendations, provided that the consent of the states concerned is obtained.¹⁰¹

India was one of the middle powers, which supported not only the U.N. resolutions requesting the withdrawal of the French, British and Israeli troops, but also the creation of U.N.E.F.I. and the resultant cease-fire. India played a very active role in this

98. Dr. Usha Sud ; n. 78, op. cit. p. 120.

99. Certain Expenses, ICJ Reports (1962) pp. 151, 171-2. See also pp. 184-5.

100. Ibid, p. 172, For the text of these Articles, See p. 176.

101. International Court of Justice : Pleadings, Oral Arguments, Documents : Effect of Awards of Compensation made by the U.N. Administrative Tribunal, 1954, pp. 295-301.

peace-keeping operation. It provided commanders like Lieutenant General P.S. Gyani who commanded the U.N.E.F.I. from December 1959 to January 1964, and Major General J. Rikhye, who led them from January 1966 to June 1967.¹⁰²

The role of the United Nations in the Suez Crisis marked a new phase in the history of collective security organization. The two principles, (i) that an individual State shall not use aggressive force in international relations and (ii) that a breach of this rule concerns the whole international community and should be resisted by collective action, were fully vindicated. But the methods used had little or no resemblance to those envisaged by the framers of the Charter. U.N.E.F., which represented the collective action of the international community, owed its existence to the General Assembly and not to the Security Council. It drew its personnel from those smaller states which were not Permanent Members of the Security Council. It did not emphasize the collective coercive measures. On the contrary, U.N.E.F. drew its existence, its strength and its functions from the goodwill of Member States, the consent of the nations concerned, and respect for the organization it represented.¹⁰³

After 1956, one could clearly discern a new trend in thought and practice regarding the role of United Nations in the maintenance of peace and security. The emphasis definitively shifted from peace enforcement to peace-keeping. Collective enforcement discussions disappeared from the public agenda for some years. When the subject came up again in the sixties, it was in a new guise, as part of the Soviet and U.S. disarmament plans.¹⁰⁴

102. Dr. Usha Sud ; n. 78, op. cit. p. 121.

103. K.P. Saksena, n. 4, op. cit. p. 196.

104. Ruth B. Russell, "The United Nations and United States Security Policy", The Brookings Institution, Washington, D.C. 1968, p. 136.

The Congo Operation : 1960

On 30 June 1960, King Baudouin of Belgium proclaimed the independence of the Republic of Congo at Leopoldville. Because of its size, the diversity of natural resources and the position it occupies in the centre of the Continent, it is destined to play an important role in African and in international concerns. But, since its independence, the Congo has been the scene of bitter conflict, internal strife and disunity which have made it difficult for the Central Government to function effectively in all parts of the Congo.¹⁰⁵

Details of the Congo tragedy are beyond the scope of this study. However, one may recall some of the basic realities in the Congo to put into proper perspective the exact nature and magnitude of the Congo crisis, the challenge that confronted the United Nations and the response it invoked.

The first, and perhaps the most important, background fact is that the Congo, in 1960, was a huge, primitive, tribal African State comprising some 70 tribes speaking different dialects and many of the political parties have strong tribal affiliations.¹⁰⁶ Each wished to promote the interest of its own tribes over those of others, and as a result riots and violence were common place.¹⁰⁷ With a territory of 2,343,930 square kilometres more than four times the size of France-in the heart of Africa, it has a strategic position of great importance. It has extensive forests and ample cultivable lands and rich mineral deposits. It is the world's principal producer of industrial diamonds and a major source of

105. Francis Parakatil, n. 5, op. cit., p. 96 : Officially renamed the Democratic Republic of the Congo in July, 1964. More recently, October, 27, 1971, renamed Zaire.

106. King. J. Gorden, "United Nations in the Congo : The Quest for Peace", Carnegie Endowment for International Peace, New York 1962 p. 10.

107. A.L. Burns and N. Heathcote ; Peace-keeping by UN Forces - Middle East and Congo", Pall Mall Press, London 1963, p. 165.

copper, manganese, and a number of scientifically important minerals.¹⁰⁸ For these reasons, control of the Congo has been a prize sought by many. Almost fifty percent of the Congo's minerals wealth is located in Katanga province ; and dominating the life of Katanga, at the time of crisis, was the vast Union Miniere de Haut Katanga, largely a Belgian-British concern.¹⁰⁹

For very long the Congo was the 'golden pinwheel' of Africa. Its riches and great potential were ever an attraction to colonialists, and in particular amongst Europeans, to the Belgians. Belgium under King Leopold II started the explorations in 1870. In 1883, the well-known explorer Henry M. Staneley was sent by King Leopold to establish trading stations along the Congo river, to make treaties with African chiefs and to conduct further explorations. In 1885, in the Belgium Treaty Conference of 13 European states to delimit territorial claims in Africa, King Leopold of Belgium was given the authority to organize the 'Congo Free State'. In 1908, the Belgium Government assumed full colonial responsibility for the Congo.¹¹⁰

After 1945, there were some particular events which helped the Congolese to envisage the possibility of getting their independence. For the first time Congolese leaders were seen abroad when they visited the Brussels World Fair. The first meeting of all African Heads of State at Accra attracted the world's attention, and General De Gaulle's launching of the French Community at Congo Brazzaville had a marked effect on thinking minds in Central Africa.¹¹¹ At home the Municipal elections of 1957 in Leopoldville, Elizabethville and Jadotville encouraged the

108. K.P. Saksena, n. 4, op. cit. p. 215.

109. King J. Gorden ; n. 106, op. cit. p. 33.

110. L.M. Tondel, Jr. ed. : The Legal Aspects of the United Nations Action in the Congo," Oceana publications, New York 1963 p. 2.

111. Ibid., p. 7.

development of national movements for the independence and unity of provinces, from which there emerged brilliant political leaders like Patrice Lumumba, Joseph Kassavubu, Moise Tshombe, Albert Kalonji and Antoine Gizenga.¹¹²

This series of events paved the way to a 'Round Table Conference' in Brussels in January 1960, in which the date of independence of the Congo was fixed. As a guarantee and help to the new Republic, on 29 June 1960, a 'Treaty of Friendship' was established and signed by both the Belgian and Congo Governments. This Treaty provides that : "Belgium military detachments were to remain in the Congo and Belgium officers were to continue to ensure the command of the 'Force Publique' (later called Armee Nationale du Congo→ANC) as no Congolese had until then obtained even the lowest officer's qualifications. Belgium was to place advisers at the disposal of the administration until command could be taken over by Congolese who had acquired adequate training."¹¹³

Soon after independence, the Congolese forces mutinied and committed acts of violence against Belgian officers all over the Congo. In Katanga M. Tshombe requested the assistance of Belgium to rescue civilians, both African and Belgian, to save their lives and their property. Belgium sent troops to maintain or restore order. As a consequence riots and violence increased, Tshombe made the most of this massive arrival of Belgian troops and declared Katanga an Independent Republic on July 11, 1960. The Congo Government of Leopoldville dubbed this action aggression from external states in the Republic of the Congo. Whether an aggression (Congo's point of view) or a humanitarian act to protect

112. King J. Gorden, n. 106, op. cit. pp 7-9.

113. Quoted in IPKO Documentation, A Service of the World Veterans Federation, Paris No. 10 (Denmark), June 1967, p. 11.

lives of its nationals (Belgian point of view) under the terms of United Nations Charter, it appeared to be a classic situation that called for action to offset a threat to international peace.¹¹⁴

After attaining independence the country had many serious problems, economic, social, political, military and administrative. Powerless to restore order and to maintain normal life in the country-the Republic of the Congo requested the military assistance of the United Nations because of "the dispatch to the Congo of Metropolitan Belgian troops in violation of the 'Treaty of Friendship' signed between Belgium and the Republic of the Congo on 29 June 1960;" no request for such troops had been made and "the unsolicited Belgian action (is regarded) as an act of aggression against our country", and a preparation for "the secession of Katanga with a view to maintaining a hold on our country." The essential purpose of the requested military aid is to protect the national territory of the Congo against the present external aggression which is a threat to international peace.¹¹⁵

The Congo crisis was placed before the Security Council by Secretary-General Hammarskjöld under Article 99.¹¹⁶ He "strongly recommended" to the Council to authorize the Secretary-General to take necessary steps in consultation with the Government of Congo to provide the Government with military assistance. In making this recommendation, the Secretary-General referred to three communications received from the Government of Congo : One which was orally made by the Government through Ralph Bunche requesting "urgent technical assistance" for the purpose

114. Francis Parakatil, n. 5, op. cit. p. 98.

115. UN Doc. S/4382, 13 July, 1960.

116. Article 99 of the Charter States that "the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of International peace and security."

of "security administration of the country,"¹¹⁷ the other two communications were both related to a request for military assistance from the United Nations. One of these was a formal request, the other a clarification of that request, and of the intentions of the Government that if U.N. assistance was not received "without delay" the Congo would be obliged to appeal to the Bandung Powers.¹¹⁸ In appealing for urgent military aid to protect the national territory of the Congo against the present aggression, the communication cited two situations : (i) armed intervention by Belgian troops, and (ii) "colonialist machinations" and a "conspiracy between Belgian imperialists and a small group of Katanga leaders "in preparing secession of Katanga."¹¹⁹

The Secretary-General having carefully analysed the request, brought it before the Security Council saying that the Belgian troops being in the Congo," the presence of these troops is a source of internal and potentially international tension. It is in this light, I personally wish to see the request for military assistance which has been addressed to me by the Government of Congo. Although I am fully aware of all the problems, difficulties and even risks involved.... It is, therefore, my conclusion that the United Nations should accede to the request of the Government of the Congo.¹²⁰ On 14 July the Security Council adopted a resolution in which it stated that it :

(i) "Calls upon the Government of Belgium to withdraw their troops from the territory of the Republic of the Congo.

(ii) Decides to authorize the Secretary-General to take the

117. S.C.O.R., Fifteenth Year, 873rd meeting, July 13-14, 1960, p. 4.

118. S.C.O.R., Fifteenth Year, Supplement for July-August and September, 1960, p. 12. (Doc. S/4382).

119. K.P. Saxena ; n. 4, op. cit. p. 222.

120. U.N. Review, Vol. VII, No. 2, August 1960, p. 45.

necessary steps in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary."¹²¹

In order to carry out the resolution the Secretary-General set up the United Nations Operation in the Congo—'Operation des Nations Unies au Congo' (ONUC). ONUC¹²² was, on the one hand, a civilian operation and, on the other, an international armed peace force.¹²³ The objectives of the ONUC were, the withdrawal of Belgian troops, the maintenance of law and order, the termination of the secession of Katanga and the provision of technical assistance.¹²⁴

The goals for the ONUC were established by a series of Security Council resolutions in 1960-61 and by a resolution adopted on September, 20, 1960, by the General Assembly's emergency session on the Congo. These goals are summarized by Ernest W. Lefever in his study of the Congo operation as follows :

Restore and maintain law and order. Protect life and property throughout the country. Transform the Congolese army into a reliable instrument of internal security. Restore and maintain the territorial integrity of the Congo. Prevent civil war and pacify tribal conflict. Protect the Congo from external interference in its affairs, particularly through the elimination of foreign mercenaries hired by secessionist Katanga.

All of these purposes and the guidelines for the conduct of the operations were generally adhered to, although continued

121. U.N. SC. Res. 143, 14 July 1960.

122. It was called ONUC for French was the official language in the Congo.

123. Everyman's United Nations XX : UN Publications, New York 1968, p. 169.

124. Francis Parakatil ; n. 5, op. cit, p. 100.

crises in the Congo after withdrawal of the ONUC demonstrated the absence of stability.¹²⁵

(A) United Nations Force in Leopoldville

Leopoldville¹²⁶ is the capital of the Republic of the Congo and it is its largest city. As the mutinies first started there it was the first place where the UN Force was deployed, occupying key posts such as Radio Stations, Airports etc. in mid-July 1960. In Leopoldville, the tasks of the Force which included patrolling in a populous country, and the protection offered to public personalities at their request helped to prevent any violence or bloodshed.¹²⁷

But it was the unity of the Congo which most pre-occupied Prime Minister Lumumba. So he reiterated the request to ONUC to subdue Katanga even with force, if there was no other way. But ONUC did not wish to interfere in internal conflicts. This made Lumumba very bitter against the United Nations.

Mr. Lumumba's friendship with Russia and the massacre of Kasai' by Lumumba's forces frightened President Kasavubu.¹²⁸ As a result Kasavubu dismissed Lumumba saying that he had "betrayed his office by provoking discord within the Government, depriving citizens of their fundamental liberties and plunging the country into fratricidal civil war."¹²⁹ Lumumba on his part discharged President Kasavubu under the confused constitution of the 'Loi Fondamentale'. Parliament, the supreme legislature, accepted neither Kasavubu's dismissal nor Lumumba's discharge.

125. Ernest W. Lefever, "Crisis in the Congo : A United Nations Force in Action", : The Brookings Institution, Washington D.C. 1965 p. 177.

126. Leopoldville Officially renamed Kinshasa on 1 July 1966.

127. U.N. Doc. S/4557, 2 November 1960, para 58.

128. U.N. Review, Vol. VII, No. 4, October 1960, p. 8.

129. A.L. Burns and N. Heathcote, n. 107, op. cit. p. 46.

These internal political conflicts reflected the influence of the 'Cold War', with Lumumba increasingly representing the aspiration of the Soviet Union and Kasavubu those of the West. President Kasavubu appointed J. Ileto to take over as Prime Minister. On 14 September 1960, Colonel Mobutu announced that the army was taking over power in a peaceful revolution and that political activity by Mr. Lumumba, Kasavubu and Ileto would be suspended for the year.

Parliament was convened under the protection of ONUC. Once the legal Government of Leopoldville was established under Mr. C. Adoula, the United Nations could work properly for the unity and integration of the entire Congo, the reorganization of the army and aid to the Central Government for the proper functioning of the Republic of the Congo.¹³⁰

(B) United Nations Force in Katanga :

Katanga was the richest of all the provinces of the Congo (Leopoldville).¹³¹ Geographically, Katanga was strategically situated on the borders of Portuguese Angola and the Central African Federation ruled from Salisbury by Sir Roy Welensky's white Government.¹³² Because of its riches many different categories of foreigners, particularly Belgians, resided in Katanga, among others were military, para-military, mercenaries, advisers and staff of 'Union Miniere du Haut Katanga'.¹³³

Politically there were two main parties, Conakat under Moise Tshombe and Balubakat under Jason Sendwe.¹³⁴ The municipal elections of 1957 gave the majority to the Conakat party and they

130. Francis Parakatil ; n. 5, op. cit. pp. 101-102.

131. The Hindu, 23 August 1962.

132. The Hindustan Times, 23 September 1961.

133. The 'Union Miniere du Haut Katanga' is a Belgian Corporation with its head-quarters in Brussels.

134. U.N. Review, Vol. IX, No. 7, July 1962, p. 18.

formed the provincial Government of Katanga under Tshombe. The Katanga secession was encouraged by the Belgians who wished to have a friendly Government in Elizabethville as a counterweight to Lumumbist force, believed 'unitarian' and 'pro Soviet'. Moreover, the growing hostility of the Congolese, particularly under Lumumba, towards the Belgians increased the fear of foreign interference in Katanga and Kasai. So secession appeared to be the only road to safety.¹³⁵

To restore the unity and integrity of the Congo, ONUC had to put an end to the secession and bring about the withdrawal of foreign troops. To implement the resolutions of the Security Council the UN Force decided to enter into Katanga.¹³⁶ But Tshombe advised the Secretary-General that he would resist the UN Force in Katanga. The Secretary-General replied to Tshombe that under international law "subordinate territorial organs of a nation were bound by the terms of Security Council resolution as much as member states themselves".¹³⁷ Later the Secretary-General himself went into Katanga with the UN Force, and the evacuation of foreign troops from Katanga took place although not completely. Moreover, once the legal Central-Government was established through Parliament, the UN Force could really get down to enforce President Kasavubu's decree of August 24, 1961, expelling all non-Congolese officers. Since Tshombe did not keep his promise to evacuate all foreign officers, the UN Force threatened that they would use all possible means to implement UN decisions. On September 13 firing broke out. On the request of the British delegate, a cease-fire was agreed upon on 17 September at Ndola in Northern Rhodesia and, in spite of the fact that the Secretary General was killed in a plane crash on

135. Francis Parakatil ; n. 5, op. cit. p. 103.

136. UN Doc. S/4417, 6 August 1960, para 4.

137. Quoted in King J. Gordon, n. 106, op. cit., pp. 37-38.

his way there, the cease-fire came into effect three days later.¹³⁸

Since the cease-fire agreements were not observed by the Katangese, the resolution of 24 November 1961 directed the UN to put an end to the secession.¹³⁹ On 28 November, trouble started. As a result, the UN Force intervened in Katanga a second time, at the end of December 1961. When Tshombe understood that there was no hope of continuing a war against the United Nations, he accepted, at the United Nations request, the Kitona Agreement on 20 December. The eight-point Kitona Agreement was supposed to procure the end of secession and reintegration with the legal Government of the Congo. As the talks between Adoula and Tshombe could not reach an agreement, on August 20, the Secretary-General proposed a "Plan of National Reconciliation" to end the secession of the province of Katanga and to achieve the peaceful unification of the Congo.¹⁴⁰ The main points of the Plan were : the drafting of a Federal Constitution, the division of revenue between the central and provincial governments, the unification of all military, para-military or gendarmerie units into a national army, the withdrawal of all provincial representatives abroad and at home not serving under the authority of the Central Government, and the reconstitution of the Central Government. Although the plan was accepted by Tshombe, there were differences on the terms and thus it was not successful.¹⁴¹

The subsequent attack of the Katangese gendarmerie against the Armee Notionale du Congo caused the UN Force to intervene a third time in Katanga, on 29 December 1962. On 13 January, Tshombe, finding it hopeless to fight, declared to the Secretary-General and Prime Minister Adoula that the secession of Katanga

138. Francis Parakatil, n. 5, op. cit. pp. 103- 104.

139. UN Doc. S/4940, Add. 15, November 30, 1961, pp. 2-3.

140. UN Review, Vol. IX, No. 12, December, 1962, p. 39.

141. Ibid., pp. 42-43.

was over : "I am ready to proclaim immediately before the world that Katanga's secession is ended." This was the most important achievement of the ONUC in the Congo, i.e., to restore territorial integrity and political independence to the Republic of Congo.¹⁴²

(C) United Nations Force in Orientale :

The province of Orientale, particularly the capital, Stanleyville, was the stronghold of MNC, of Lumumba's party. Moreover, Stanleyville was his home-land and when he was imprisoned after dismissal by Kasavubu, a self-styled political heir of his, Antoine Gizenga, proclaimed the re-establishment of the legal Government of the Republic of the Congo in Stanleyville during the month of August 1960. So the UN Force had to be constantly vigilant to prevent a clash between the Governments of Leopoldville and Stanleyville which both claimed to be the legitimate Government of the Republic of Congo at that time.

The death of Lumumba brought the threat of violence to the entire population of Orientale. The UN Force made a great effort to calm down the Leopoldville and Stanleyville troops.¹⁴³

After the reconstitution of legal Government, Gizenga became Vice-Prime Minister of the Congo. But after a short time, he returned to Stanleyville from Leopoldville and established a new political party known as PANALU (Partie Nationale Lumumbiste). He also formed a private army entirely composed of the provincial gendarmerie.¹⁴⁴ Soon, fighting broke out at Camp Ketele between the gendarmerie and the Central Government Army. It was the United Nations Ethiopian troops who disarmed the gendarmerie and restored law and order. On January 20, Gizenga was taken

142. Francis Parakatil ; n. 5, op. cit. pp. 105-106.

143. Ibid, pp. 105-106.

144. UN Review, Vol. IX, No. 2., February 1962, p. 27.

to Leopoldville under United Nations protection, and there he was placed under the security of the Republic of the Congo.¹⁴⁵

(D) United Nations Force in Kasai :

Kasai is another rich province of the Congo. The two main tribes of Kasai were in constant dispute for power. Accordingly the Baluba leader A. Kalonji declared the South of Kasai an independent state (East Autonome) in August 1960 to escape from the violent attacks of the Lulua.¹⁴⁶ During all these disturbances particularly during the 'massacre of Kasai,' when the Lulua brutally attacked the Baluba tribe, the ONUC was constantly at work to protect human lives and to keep law and order until the legal Government of the Congo be established.¹⁴⁷

The Congo crisis of 1960 and subsequent peace-keeping efforts by the United Nations were the most complex historical events that ever confronted the world organization. Although the crisis began with the breakdown of internal law and order, it soon assumed a serious threat to international peace and security. The response it invoked among the international community symbolically displayed the spirit behind the principle of collective security. There was general willingness to support a collective action to meet the threat to peace, but the means and resources made available for such an action fell far short of the objectives.¹⁴⁸

Indeed, the Congo operation, to a great extent, was conducted by persons rather than by detailed procedures, rules or laws. The vagueness of Council and Assembly resolution, and the improvised character of the peace-keeping mission, had inevitably resulted in this heavy dependence upon persons in key position within the

145. Francis Parakatil ; n. 5, op. cit. pp 106-107.

146. King J. Gordon ; n 106, op. cit. pp. 51-52.

147. Francis Parakatil ; n. 5, op. cit. p. 107.

148. K.P. Saksena ; n. 4, op. cit. p. 267.

Secretariat. Lacking a clear mandate or even any substantial "common law", the Secretary-General had no choice but to take initiative and exercise his discretion. The UN role as an instrument of U.S. policy in the Congo should not, however, detract from the overall results of U.N. operations which helped avoid a direct confrontation between the two Super-Powers. In the face of incredible difficulties and frustrations, O.N.U.C., filling in the vacuum, kept the violence localized.¹⁴⁹

In concluding his study of the Congo operation, Ernest W. Lefever summarizes his overall assessment of its shortcomings and successes as follows :

"The Congo peace-keeping effort was a novel, controversial, and a less-than efficient enterprise. It sometimes fumbled. It made many small mistakes. It was assailed on all sides. It precipitated a financial crisis for the United Nations. But in the final analysis, the U.N. Force must be judged by its contribution to international stability, regardless of what other interests it might have served. So Judged, the mission succeeded. It contributed to peace and security in Central Africa and in the wider world. As the largest and most complex internationally authorized and administered operation in history, the Congo peace-keeping effort is rich in lessons and warnings for the future".¹⁵⁰

The Cyprus Question :

The need for a United Nations Force in Cyprus is prompted by a complex political and social situation in that island state. Nearly 80 percent of the population is of Greek origin ; most of the remainder are Turkish. Turkey ruled Cyprus from the Sixteenth to the Nineteenth Century, but ancient cultural ties link

149. Ibid ; pp. 268-272.

150. Ernest W. Lefever, n. 125, op. cit., p. 177.

Cyprus to Greece. Because of proximity to Turkish territory, the island is strategically important to Turkey, but the importance of naval bases in the eastern mediterranean also enhances its strategic importance to the United Kingdom, which controlled Cyprus from 1878 to 1960. Some of the Turkish segments of the population favoured partition of the island into Greek and Turkish political units. A further complicating factor was that the threats of hostilities between Greece and Turkey over the Cyprus issue constituted also a threat to the unity of interests in NATO. Since the Soviet Union had strong interests in the eastern Mediterranean area, the major powers as well as Greece and Turkey were vitally concerned with the situation in Cyprus.¹⁵¹

In 1954, 1956, and 1957 Greece requested the General Assembly to consider the question of self-determination for Cyprus. No action resulted except for resolutions suggesting that the parties concerned seek a solution through negotiation. Terrorist activities spread in Cyprus after 1955, and the internal situation became increasingly tense. Consultations in Zurich and in London in February 1959, resulted in an agreement for the future status of Cyprus negotiated among the prime ministers of Greece, Turkey, and United Kingdom and Archbishop Makarios for the Greek Cypriots, and Fazil Kuchuk representing the Turkish Cypriots.¹⁵²

The Republic of Cyprus became an independent state on 16 August 1960, and a member of the United Nations a month later. The constitution of the Republic which came into effect on the day of independence, had its roots in agreements reached between the heads of Government of Greece and Turkey. The settlement

151. A. Le Roy Bennett ; "International Organisations : Principles and Issues", Prentice Hall, The, New Jersey, 1977 pp 149-50.

152. Ibid : p. 150.

of 1959 looked forward to Cyprus becoming a republic with a regime specially adopted both to the ethnic composition of its population approximately 80 percent Greek Cypriots and 18 per cent Turkish Cypriots. The special relationship between Cyprus, Greece, U.K. and Turkey was recognized. Greece, Turkey and the United Kingdom provided a multilateral guarantee of the basic articles of the constitution. In case the Treaty of Guarantee broke down, the three powers undertook to consult on Joint action. In case joint action proved to be impossible each state party to the treaty was free to take action "with the sole aim of re-establishing the state of affairs "as mentioned in the treaty. However, the union of Cyprus with any other state and the partitioning of the island were forbidden.¹⁵³

The treaty permitted the U.K. to retain sovereignty over two areas where it had its military bases. The Constitution assured the participation of each community in managing government functions. Supremacy of the larger community was to be avoided, and partial administrative autonomy was granted to each community. From the very beginning the constitutional provisions faced difficulties. A series of constitutional crises occurred, creating tension between the Greece and the Turkish communities. Archbishop Makarios, who was the President of the Republic, recommended amending certain parts of the constitution to avoid tension. The Turkish Government, to which the President's proposal had been communicated for "information purposes" rejected them, and described President Makarios's claim as "false propaganda." It charged that the Greek Cypriots had never attempted to implement the constitution in good faith. Violent disturbance broke out between Turkey and Cyprus a few days later, on 21 Dec. 1963. On 25 December, the Cyprus Government

153. Dr. Usha Sud ; n. 78, op. cit. p. 128.

charged that Turkish war-planes had flown at "tree level" over Cyprus.¹⁵⁴

The Government of the United Kingdom, Greece and Turkey offered their joint good offices, to the Government of Cyprus to contain the crisis. This was accepted. Thus, on 26 December, a cease-fire was arranged. On 30 December, it was agreed that a neutral zone should be created, along the cease-fire line ("green line") between the areas occupied by the two communities in Nicosia. That zone was to be patrolled by the joint peace-making force, but in practice the task was carried out almost exclusively by its British contingent. It was decided, that a conference of the representatives of the Governments of the U.K., Greece and Turkey and of the two communities of Cyprus, would be convened in London in January 1964.

These arrangements were reported to the Security Council by the permanent representative of U.K. to the U.N. An urgent meeting of the Security Council was held, at the request of the representative of Cyprus, to consider the complaint of the Government of Cyprus against Turkey. The Secretary-General met with the representative of Cyprus to explore the way, in which U.N. could help restore peace in the country. Representatives of Greece, Turkey and the United Kingdom asked the Secretary General to appoint a personal representative to observe the peace making operation of Cyprus. After consultations regarding the functions of the representative, the Secretary General on 17 January, 1964, appointed Lieutenant General P.S. Gyani, of India, as his personal representative and observer, to go to Cyprus, and stay until the end of February. Gyani's mandate was later extended until the end of March.¹⁵⁵

154. The Blue Helmets : A Review of U.N. Peace-Keeping", Second Edition, U.N. Publication 1990 p. 283.

155. Ibid, p. 284.

The London Conference, held on 15 January, 1964, failed to reach an agreement. The strengthening of the international peace making force was rejected by the Government of Cyprus, which emphasized, that, any such force should be placed, under the control of the U.N. from Nicosia. General Gyani reported a grave and deteriorating situation, involving intercommunal fighting, antagonism between the members of the two communities, and disintegration of the machinery of Government, as well as fears of military intervention by Turkey and Greece. While Gyani's presence had been helpful, the need for establishing a United Nations peace-keeping operation was widely felt. In February, urgent action was requested by the representatives of the U.K. and of Cyprus. The Secretary-General engaged in extensive talks with all the parties, about the functions and organization of the United Nations force.¹⁵⁶ On 4 March the Security Council unanimously adopted resolution 186 (1964), by which the Security Council took cognizance of the fact that the situation in Cyprus was likely to threaten international peace and security and recommended the creation of a United Nation's Peace-keeping Force in Cyprus (U.N.F.I.C.Y.P.) with the consent of the Government of Cyprus.¹⁵⁷

The U.N. initiative this time came with due caution and prefacing. At first the U.N. Secretariat had been most reluctant to become involved ; the policy differences and the financial fall-out of the Congo operation having had a marked effect on its willingness to see the organization jump into new peace-keeping ventures. Even when consensus was reached that U.N.F.I.C.Y.P. should be financed by voluntary contributions, the Secretary-General made sure that the necessary minimum of such

156. Dr. Usha Sud ; n. 78, op. cit. p. 129.

157. Security Council Resolution 186 (S/5575). Yearbook of the United Nations, 1964, p. 165.

contributions, were made available in advance before U.N.F.I.C.Y.P. could be launched.¹⁵⁸

On March 4, 1964, the Security Council unanimously approved the creation of the United Nations Force in Cyprus (UNFICYP) for a period of three months. Three-and six-month extensions prolonged the authorization for the operation over the next several years. The Secretary-General was given authority over the force and its financing. The peculiar circumstances in Cyprus made possible the acceptance of a British component of the UNFICYP, which has varied from more than 40 percent to less than 20 percent of the total manpower. An original target of a force of 6,000 to 7,000 men was achieved within the first two months after the adoption of the March resolution. Nine countries have furnished contingents of military or police personnel for the UNFICYP.¹⁵⁹

The costs of maintaining the UNFICYP has been borne by countries furnishing contingents, by the government of Cyprus, and by voluntary contributions. NATO countries have furnished more than 90 percent of the voluntary contributions, with the United States and the United Kingdom giving nearly two thirds of amount. The mandate for the UNFICYP was to prevent a recurrence of fighting and to contribute to the maintenance of law and order and a return to normal conditions. Relative peace was restored in Cyprus except for a series of incidents in 1967 and the major crisis of 1974. However, the basic causes of conflict between the majority and minority segments of the population have not been altered. A return to the full operation of the 1960 constitution is now impossible.¹⁶⁰

158. On March 13, 1964, the Security Council adopted another resolution (Resolution 187, U.N. Doc. 5603) in response to the Secretary-General's report dated March 12 U.N. Doc (S/5 602).

159. A. Le Roy Bennett ; n. 151, op. cit. p. 150.

160. Ibid, pp. 151-152.

UNFICYP was made possible because the parties involved in the dispute, Britain, Greece, Turkey and Cyprus, the last in particular, were willing to accept its role. So were the two Super-Powers. The Soviet acceptance of UNFICYP was seemingly due to the fact that such a force was an additional guarantee of the independence and "non-alignment" of Cyprus. The NATO force, as an alternative, would have carried the possibility of pressure being brought about in favour of a solution which satisfied Greece and Turkey at the expense of non-aligned Cyprus. The U.N. intervention, on the other hand, prevented the issue being dealt with as if it was essentially an intra-N.A.T.O., affair. The third alternative, for the U.S.S.R., its direct intervention, could be fraught with frightful possibilities.¹⁶¹

The basic causes of the Cyprus conflict have not yet been settled. The Turks and the Greeks are still at each other's throat but U.N.F.I.C.Y.P. has to date succeeded in diffusing the crisis and in maintaining a semblance of law and order in the Island.¹⁶²

The maintenance of a United Nations peace-keeping force in a divided and tension-ridden country is a costly inconvenient, but necessary enterprise. Andrew Boyd reminds us of the possible consequences of withdrawing the UNFICYP. "Can it be seriously contended that it would be better to leave the Cypriots to kill each other until the neighbour countries are dragged into a under war ? The UN operation in Cyprus is easy to criticize-until you give a little thought to the alternatives."¹⁶³

Rhodesian Independence Issue : November 1965

The problem of decolonization in Rhodesia (Zimbabwe) was

161. K.P. Saksena ; n. 4, op. cit. p. 288.

162. Ibid, p. 288.

163. Andrew Boyd ; "Fifteen Men on a Powder Keg ; A History of the United Nations Security Council", Stein and Day, New York, 1971, p. 298.

unique in the sense that there was no problem there of persuading the administering authority, the United Kingdom, to grant independence to the local inhabitants. The struggle for Zimbabwe involved the replacement of a white-minority settlers' regime of the African majority. The administering authority, which exercised little physical control over Rhodesia, and the U.N. had been wrestling with the problem since the early 1960s.¹⁶⁴

On 11 November, 1965 white settlers in the British colony of Rhodesia unilaterally declared Rhodesia independent, against the wishes of the United Kingdom and of the Africans who formed 94 per cent of the population of Rhodesia.¹⁶⁵ In November, 1965, the Council had applied a system of voluntary sanctions by calling upon "all states to refrain from any action which would assist and encourage the illegal regime and in particular, to desist from providing it with arms, equipment and military material and to do their utmost in order to break all economic relations with Southern Rhodesia, including an embargo on Oil and Petroleum products ; and take all the enforcement measures under Article 43 of the U.N. Charter."¹⁶⁶ This was subsequently replaced by mandatory sanctions under Resolution 232 of 16th December, 1966. This Resolution stated that the Council was acting in accordance with Articles 39 and 41 of the Charter and determined that "the present situation in Southern Rhodesia constitutes a threat to international peace and security." It then decided "that all states members of the United Nations shall prevent..... the import into their territories" of a variety of commodities and went on to

164. L.P. Singh ; "United Nations and the Birth of States", Gitanjali Publishing House, New Delhi, 1986 p. 237.

165. Michael Akehurst ; "A Modern Introduction to International Law," George Allen and Unwin, Sydney, 1984, p. 181.

166. U.N. Doc. S/PV 1265, November 30, 1965, p. 2, Resolution 217 of November, 1965.

prescribe a number of activities by their nationals which might promote trade with Rhodesia in such commodities.¹⁶⁷

Some right-wing politicians in the United Kingdom denied that the situation in Rhodesia constituted a threat to international peace ; but Article 39 gives the Security Council a discretionary power to determine what constitutes a threat to the peace, and member-states cannot substitute their own opinion for that of the Security Council. Nor can it be said that the Security Council's decision was wholly unreasonable or an abuse of its discretionary power (in some systems of municipal law an administrative body's decisions are invalid if they are wholly unreasonable or an abuse of that body's discretionary power ; but it is not certain whether a similar rule of international law applies to the Security Council). The whole purpose of the unilateral declaration of independence in Rhodesia was to preserve the political and economic dominance of the whites (numbering 6 per cent of the population) over the Africans (numbering 94 per cent of the population). There was obviously a risk that sooner or later the Rhodesian Africans would react violently against this state of affairs, and a risk that fighting between the Rhodesian Africans and the white regime might spill over into the territory of neighbouring states ; indeed, both these risks became realities in the 1970s. If a situation is likely to lead to such results, it is not unreasonable to describe it as a threat to international peace.¹⁶⁸

In relation to the Rhodesian situation, the Council had extended its sanctions of November, 1965 beyond the purely

167. UN Doc. S/PV 1340, December 16, 1966, pp. 20-22.

168. Michael Akehurst ; n. 165, op. cit. pp 181-82. See also, R. Higgins, 'International Law, Rhodesia, and the UN ; The World Today, Vol. 23, 1967, p. 94, and J.E.S. Fawcett, 'Security Council resolutions on Rhodesia', British year Book of International Law, Vol. 41, 1965-6 p. 103.

voluntary stage even before the resolution of December, 1966. Because the supply of oil appeared likely to be decisive.¹⁶⁹ Rhodesia's attempt to establish its independence against the wishes of the world community, the Council, in a resolution of April, 1966, called upon the Portuguese Government to refrain from pumping oil to Rhodesia through the pipeline at Beria ; upon other states to divert any vessels flying their flag from carrying oil destined for Rhodesia, and upon the United Kingdom Government "to prevent by the use of force, if necessary, the arrival at Beria of vessels reasonably believed to be carrying oil for Rhodesia. Implementation of the Councils policy was thus left primarily to the Government of the United Kingdom."¹⁷⁰

Some people also criticised the Security Council action on Rhodesia on the grounds that Rhodesia was not a state and had not committed any breach of International law.¹⁷¹ The Security Council revoked its resolution on Rhodesia at the end of 1979, after the 'government' of Rhodesia had agreed to revoke the unilateral declaration of independence and to accept the principle of majority African rule.¹⁷²

From the preceding survey, it is evident that after the Korean War, the United Nations neither followed that restrained and conciliatory approach which was characteristic of its functioning in the pre-Korean period, nor repeated the Korean experiment of applying coercive measures against a "disturber" of the peace. In all instances involving armed hostilities and threats to peace, the

169. Samar Sen ; "United Nations and the Global Challenge," Kanishka Publishers, New Delhi, 1996 p. 118.

170. U.N. Doc. S/PV 1277, April 9, 1966, pp. 36-38.

171. Michael Akehurst ; n. 165, op. cit. p. 182.

172. U.N. Chronicle, 1980, No. 1 pp 13-16.

U.N. role was either conspicuous by its absence or proved ineffective because of the defiance of the U.N. authority by one or more of the great powers. The first lesson that could be drawn was that the assumption of the framers of the Charter was vindicated. The United Nations could function effectively only if Big Power unity is preserved.¹⁷³ In order to make the United Nations a more effective instrument for dealing with aggression and threats to international peace, much remains to be done.¹⁷⁴

173. K.P. Saksena ; n. 4, op. cit. p. 149.

174. A. Le Roy Bennett ; n. 151, op. cit. p. 153.

CHAPTER V

**GULF WAR :
THE CONCRETE EXAMPLE OF
COLLECTIVE SECURITY**

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GULF WAR : THE CONCRETE EXAMPLE OF COLLECTIVE SECURITY

"Many people believe that the knowledge of history can set men free, helping them to avoid repeating the mistakes of the past. But history can also become the master of men's souls, diverting their talents into the pursuit of ancient animosities-their future to be spent taking revenge for the past."¹ Perhaps, the Gulf Crisis, which erupted on 2 August 1990, is an unmistakable expression of the historical tragedy in the Gulf region. The roots of the crisis extend back to a couple of centuries drawing sustenance from several historical springs. The Arab unity has been an age-old phenomenon. Even before the advent of Islam, there is evidence that tribes of the Arabian Peninsula did come together in times of threat of foreign invasion *e.g.* Romans, Persians etc. But the concept of an actual Arab identity arose in the seventh century when the bond of their age-old language and the new faith, Islam, made the Arabs surge out of the Arabian Peninsula to create an empire which stretched at its zenith from the Pyrenees, along North Africa, through what is now called West Asia and deep into central Asia. This was a high watermark in the history of the Arab Empire, but it could not last long. This empire was deprived of its unity and independence. During the following centuries it was under the yoke of foreign rule. But the Arabs never lost the enormously powerful links of a Common language and a common history.²

1. Adam M. Garfinkle, "Genesis", in Alvin Z. Rubinstein, ed, "The Arab-Israeli Conflict : Perspectives," Praeger Publishers, New York 1984, p. 1.

2. Gazi Ibdewi Abdulghafour, "United Nations role in Gulf Crisis", Lancers Books, New Delhi, 1992, p. 7.

Historically, both Iraq and Kuwait were part of the old Ottoman Empire which collapsed at the time of first World War. Inside the Ottoman Empire, the Sultan appointed the Sheikh of Kuwait as the representative of the Governor of Basra which is a city in Iraq. On this basis, Iraq has long made the claim that Kuwait was really part of the province of Basra, which means part of Iraq.³ After the collapse of Ottoman Empire in 1917, saw the colonial powers, mainly England and France, divide this area among themselves.⁴ Britain formally held Kuwait as its protectorate. The Emirate of Kuwait was created by the British to protect their economic interests which dovetailed into the interests of the Al-Sabah dynasty.⁵ It was strategically important for Britain to have footholds in Arabia to safeguards its sea routes to India. It may not be out of place to mention here that despite the vigilance of London, the Kuwaiti Legislative Council demanded in 1938 the re-attachment of the principality with the Hashemite Kingdom of Iraq.⁶ However, British continued their control on Kuwait until it was granted freedom and declared as an independent sovereign state on 19 June 1961.⁷

Evolution of Kuwait :—The present-day Kuwait is not an ancient state. It is a modern state created by the foreign imperialist powers which drew artificial boundaries. Kuwait, or "little fort",

3. Kulwant Kaur, "United Nations And Gulf Crisis", in *India Quarterly : A Journal of International Affairs*, Vol-XLVIII, Nos. 1 & 2. Jan-June 1992. p-60. Published by Shivaji Ganguli for Indian Council of World Affairs, New Delhi, See also, Rosemary Hollis, "At Stake in the Iraqi invasion of Kuwait: Borders, Oil and Money", *Rusi Journal*, Vol. 135. No. 4, Winter 1990, pp-19-20.

4. Gazi Ibdeewi Abdulghafour, n. 2, op. cit. pp. 7-8.

5. George E. Kirk, "A Short History of Middle East," London, 1964 pp. 89-95.

6. M.V. Kamath, "Drawing Oil from Troubled Waters." *The Illustrated Weekly of India*, 14-20 October 1990, pp. 6-7.

7. Kulwant Kaur, n. 3, op. cit p-60.

lies at the tip of the Gulf, sharing its borders with Iraq and Saudi-Arabia. The history is concretely traceable only since the eighteenth century." The Danish traveller Niebuhr was the first to put the name Kuwait on map dated 1756."⁸ "Grane," the other name by which Kuwait was known, was also found in this map." In simple translation, Kuwait is the 'little fort.' To Europeans who skimmed the surface of Arabia for five hundred years or so, it was a sandy littoral, a tip of the Gulf, South of Basra, which gave them no great need to pause in their tracks. They also called it Qurain, the little Horn, or Grane, or some times Grains."⁹

In the eighteenth century Kuwait was a part of the territory of Bani Khalid of the Adnani tribe , whose Sheikh Barrak built the "Kut" in "Grane." Then the Utubi, a clan of the Anaiza, a North Arabian tribe, founded the town Kuwait. After that the history of Kuwait became the history of the ruling house al-Sabah, like the other ruling families of the Arabian Gulf. The al-Sabah too is a branch of the Utub tribe which migrated from Najd, and Saban bin Jabir bin Adhbi was the first Sheikh of Kuwait. The absence of strong centralized rule in Eastern Arabia made it possible for al-Sabah to become totally independent of the Bani Khalid. Local tradition is not sure of the exact date of sabah's rise to power. However, it is related that he was chosen by the inhabitants of Kuwait in tribal manner. In 1756, the al-Sabah clan seized full control over all affairs of Kuwait, vanquishing the al-Khalifa and al-Jalahma house.¹⁰

During the period 1770-1780, Kuwait became an important trading centre. Basra was declining due to its occupation by the

8. *Ahmad Mustafa Abu-Hakima*, "The Modern History of Kuwait, 1950-65", McGill University, Montreal, 1972 p-1.

9. *Zahra Freeth & Victor Winston*, "Kuwait : Prospect & Reality," George Allen and Unwin Ltd., London, 1972 p-2.

10. *Ahmad Mustafa Abu-Hakima*, n. 8, op. cit. pp. 5-6.

Persians. The Kuwait-British relationship started during this time when the British East India Company diverted its trade from India, the Mediterranean and Europe to Kuwait. In 1793-94 the British Residency moved its office from Basra to Kuwait. The Wahhabis rose into prominence in the region during this time. These fanatical zealots of the Wahhabi order repeatedly attacked Kuwait in 1792-93. The forces of the East India Company, in court with forces of the rulers, repulsed the Wahhabi raids.¹¹

There is a controversy over the exact state of the Kuwait-Ottoman relationship. It is said that the Ottoman Empire maintained a quasi-sovereignty over Kuwait throughout the eighteenth century. Apparently, the Kuwaiti rulers, in order to retain their autonomy, recognized a general Ottoman sovereignty over Kuwait by the payment of "an annual tribute of 40 bags of rice and 400 fraslals of dates" and received from their suzerain "every year a dress of honour."¹² To help Kuwaitis combat the effect of Wahhabism, in 1838-39 the Ottoman Sultan appointed an envoy in Kuwait. In 1871, the Ottoman Sultan bestowed on Sheikh Abdullah bin Sabah al-Jabir the title of Qaimmagam under the Turkish Wali (Governor) of Basra and thus abrogated the decree which had made Kuwait a part of al Hasa province. This made Kuwait part of the more important Basra Wilayet. As a result, it could run its own internal affairs but the foreign flags on Kuwaiti ships were replaced by Ottoman flags. It is believed that Ottoman suzerainty over Kuwait was nominal, and some Kuwaiti even ignored the Ottoman suzerainty but that was not so in the case of foreign threats. This arrangement continued till the reign of Sheikh-Mubarak (1896-1915).¹³

11. *Gazi Ibdewi Abdulghafour*, n. 2, op. cit. p-10.

12. *Abdul Reda Assiri*, "Kuwait Foreign Policy: City-State in World Politics." Western Press, Boulder, San Francisco 1990, p. 3.

13. *Gazi Ibdewi Abdulghafour*, n. 2, op. cit. p-11.

Mubarak-al-Kabir accused his half brother, Muhammed of incompetency and of being dominated by the Ottomans and assassinated him. He thus became the Sheikh. The sons and the supporters of Muhammed escaped to Basra and asked for Ottoman help to defeat Mubarak. Mubarak made it clear that Kuwait was an autonomous State and owed no allegiance to Turkey.¹⁴ Fearing military action by the Ottomans, Sheikh Mubarak al Sabah approached the British on September 5, 1897 with a request for protection. In pursuance of its strategic policy in the area, Britain responded favourably, and an agreement was signed between Sheikh Mubarak and Britain on 23 January 1899. Under this agreement, Britain, in return for some undertakings made by Kuwait, agreed to protect the Emir and his successors against external threats. By the standards of those days, this was clearly an assertion of independence, and its tacit recognition by Britain.¹⁵ The factors that compelled both parties to reach this agreement were numerous. The Russians had attempted in December 1898 to gain Ottoman approval to build a railroad from Tripoli (Lebanon) to Kuwait. The German proposal to build the Berlin- Bagdad railway, and the threat from the Ottoman Sultan to Sheikh Mubarak etc; were the major causative events which led to the signing of this agreement." Despite the limitation in the treaty, Mubarak was widely held to be the only independent Sheikh in the Gulf region.¹⁶

In November 1903, Lord Curzon, the Viceroy of India, paid a

14. *Ibid*, p-11.

15. A.K. Ray, "The Gulf Crisis, Its Global 'Impact And India," in the Indian Journal of Strategic Studies, Special Issue on Gulf Crisis, Vol XVI, Published by the Department of Defence & Strategic Studies, University of Allahabad, Allahabad, 1991, p-58.

16. Richard Coke, "The Arab" Place in the Sun," Thorntan Butterworth Ltd, London, 1929, p-1184.

visit to Kuwait during a tour of the Gulf. As a follow up, a British Residency was established in Kuwait, and Col. S.G. Knox arrived in August 1904 to take up his post in spite of official protests from Turkey. In 1907, Sheikh Mubarak agreed to lease in perpetuity to the British government a plot of land about two miles west of the town of Kuwait on the foreshore at Shuwaikh. In return for the lease, Britain assured Sheikh Mubarak that it would recognize the independence of Kuwait under its rulers the Sabahs, under British protection.¹⁷ In 1913, an Anglo-Turkish agreement defined the boundaries of Kuwait. This agreement covered a fairly wide range of matters and had five sections - the first one relating to Kuwait. Articles 5-7 of this section defined the land border between Kuwait and what was to emerge later as Iraq. The point to note is that this agreement made the islands of Bubiyan and Warba indubitable parts of Kuwait territory while Safwan and Umm Qasr were taken away.¹⁸ World War I broke out and this treaty could never be ratified. "When in 1914 the British established a protectorate over the country, the state of Kuwait was little more than a part with a desert hinterland. Its borders could scarcely have been less precisely defined."¹⁹

Jabir, Mubarak's eldest son, followed his father as Sheikh of Kuwait. During his rule which lasted for a little more than a year, he reflected the Ajmans from Kuwait, where upon they moved to Safawn with the permission of the Sheikh of Zubair. Some months later, during 1916, an uneasy truce was effected between Ibn Saud and the recalcitrant Ajmam who remained Sullen and uncooperative. Jubir died in February 1917 and he was succeeded by Salem, the very man who in Saudi eyes was responsible for

17. Gazi Ibdewi Abdulghafour, n. 2, op. cit., pp-12-13.

18. A.K. Ray; n. 15, op., cit. p. 58.

19. John Simpson, "From the House of War", Hutchinson, London, Sydney, Auckland, Johannesburg, 1991., p.80.

giving shelter to the Sultan's enemies, the Ajmans. As a result, the Saudi and the Kuwaiti Sheikh engaged in typical bedouin type of one-upmanship.²⁰

Kuwait had its problems during these years. Early in 1918, Britain imposed a naval blockade on Kuwait, believing that supplies were reaching the Turks in Syria by the desert route from Kuwait. Sheikh Salem of Kuwait was informed in July that the friendship and protection of Britain was conditional upon his preventing in Kuwait any actions prejudicial to British interest. In the atmosphere of strained relations between himself and Ibn Saud, Sheikh Salim believed that the Najdi ruler had directly caused the imposition of the blockade by accusing him of pro-Turkish sympathies before the British authorities. Although the blockade was lifted after the armistice with the Turks the situation was not stable between Kuwait and Ibn Saud regarding the boundaries as defined by the unratified Anglo-Turkish agreement of 1913.²¹

The next landmark in the history of Kuwait was the Treaty of Uqair (1922). A meeting was fixed between the interested parties for November 1922. Uqair was the venue. In this treaty the border between Najd and Kuwait was agreed upon. Sir Percy Cox, the British political agent, was the "coordinator", initiator, and dominant figure." This agreement deprived Kuwait of almost 2/3 of its territory and gave it to Najd.²² Iraq was officially informed by Britain that Kuwait's northern boundary remained as determined by the Anglo-Turkish Agreement of 1913.²³

In spite of the November 1923 Conference which was

20. *Gazi Ibdehwi Abdulghafour*, n. 2, op. cit. pp-13-14.

21. *Zehra Freeth and Victor Winston*, n. 9, op. cit. p. 85.

22. *Ahmad Mustafa and Abu Hakima*, n. 8, op. cit. p-153.

23. *A.K. Ray*, n. 15, op. cit, p-58.

supervised by Britain to determine the boundaries between Najd, Hijaz, Iraq and Trans-Jordan, Kuwait's relations with the neighbouring states fluctuated among differences, friendship and hostility. Ibn Saud wanted to unify the peninsula under his control and he had a coveted eye on Kuwait. Iraq, too, since 1921 had opposed the separation of Kuwait. In fact, Iraqi rulers could not accept Kuwait to be a separate state out of their sphere of influence. King Ghazi demanded the return of Kuwait to Iraq. But he was killed in a mysterious accident in 1939 giving rise to suspicion that Britain was actually behind his death. Circumstantial evidence was that in response to his call there were uprisings by the people of Kuwait supporting the unification with Iraq and this was considered to be a threat to British interest in Kuwait. With the outbreak of World War II and the new developments which took place in the region, Britain started strengthening its influence in Kuwait.²⁴

\On 19 June 1961 Kuwait and Britain signed a treaty which terminated the 1899 agreement and Kuwait was granted independence. This was opposed by the ruler Abdul Karim Qasim of Iraq.²⁵ General Qasim declared that Kuwait was an integral part of Iraq and so he amassed his army on the border of Kuwait and appealed to the Arab countries and the World Community to acknowledge Iraq's right over Kuwait.²⁶ The Kuwait Government appealed to the British Government for help and entered into a military arrangement with the latter. On 1 July 1961, the British troops landed in the Kuwait.²⁷ However, his attempt was neutralized by the Arab forces which replaced the British forces in the first major Iraq-Kuwait Crisis. Now Kuwait was a fully

24. Gazi Ibdewi Abdulghafour, n. 2, op. cit. p-15.

25. *Ibid*, p-15.

26. George E. Kirk; n. 5, op. cit, p. 297.

27. Kulwant Kaur, n. 7, op. cit. p-60.

independent and Sovereign State. The Sheikh adopted the new title of Amir²⁸ and Kuwait Joined the League of Arab States on 21 July 1961 and on 14 May 1963 to the United Nations.²⁹

Survey of Iraq.—The Country which came to be known as Iraq was the site of one of the oldest civilizations of the world. The old name of the territory was Bilad ma Bayn-al-Nahrayn (Mesopotamia) which means land between two rivers-Tigris and Euphrates. "Iraq was one of the earliest centres of civilization in the world and its ancient history dates back to the fourth millennium B.C."³⁰ The Sumerians were replaced by the Elamites, the Amorites, the Mitannians, the Hitties and the Assyrians. Under Nebuchadnezzar (604-538 B.C.) Iraq became a larger entity which included much of the al-Hilal al -Khaseeb (Fertile Crescent). But this Babylonian State was soon conquered by the Persians in (538-339 B.C.). This land finally became a bone of contention between Byzantines and Persians. Iraq subsequently came under the rule of Achaemenids, Seleucid, and then became a buffer province of the Parthian Empire against the Roman Empire.

The Seventh Century saw the rise of Islam in Arabia and the Arab warriors set out on their conquests. Now Iraq was ruled by the Umayyids till 750 A.D. when Iraq became the nerve centre of the Abbasid Empire. After the Abbasid, Iraq fell into Shiite domination under the Buwaihids till the middle of 11th century,³¹ and the tribal Mazyadidis of Central Iraq in the first half of the 12th. Sometimes, outsiders captured powers, *e.g.* the Persian

28. Gazi Ibdewi Abdulghafour, n. 2, op. cit. p-15.

29. R.P. Anand, "United Nations and the Gulf Crisis," International Legal Studies Monograph Series No. 1, Banyan Publications, New Delhi, 1994., p-2.

30. L.K. Kimball, "The Changing Pattern of Political Power in Iraq," 1958 to 1971, Robert Speller and Sons, New York, 1972 p. 43.

31. Gazi Ibdewi Abdulghafour, n. 2, op. cit. p-16.

Buyids in the 10th and 11th centuries, the predominantly Kurdish Marwanids in northern Jezirah in the 11th, branches Seljuk Turks or their Atabeg successors in the 11th to the 13th- like the Zanganids in Mosul, Sinjar and northern Jezirah. There had also been the 'Ayyubids in the 12th and the 13th centuries. All these had brief but violent histories.³²

The Crusaders contributed to the end of Abbasid Empire and finally Iraq had to bear the brunt of the Mongol invasion. In 1258, Hulagu, the grandson of *Chinghez Khan*, invaded and captured Iraq. The establishment of the Mangol rule spelt the end of the medieval muslim world.³³ The Mongolian Turks under Timurlane, during 1380-1405 A.D., indulged in another barbaric pillage-looting and overrunning the entire area. In 1508 A.D., Iraq became a part of the Persian Safavid Empire and remained till the Ottomans burst into the battle scene against the Persian at Tshaldiran in 1514 A.D., where Salim I defeated the Safavids army led by Shah Ismaili Safawi. So the conflict between ottoman and the Safavid Empire continued. The Safavids were able to conquer Baghdad in 1623, A.D. and they held much of Iraq until a counter-conquest by the Ottomans in 1638 A.D., under Sultan Salim IV who captured Baghdad. But the Ottomans, faced number of troubles in this period." Iraq turned out to be a most difficult and expensive proposition for the Ottomans."³⁴ Ambition to rule over Iraq involved the Ottomans in numerous battles with Persians. The Ottomans made concerted attempts to consolidate their power over the province of Basra. Under the Ottoman rule Iraq was divided into four provinces-Baghdad, Mosul, Basra and Shahrazar Wilayet.³⁵

32. A.K. Ray, n. 15, op. cit. pp-50-51.

33. As quoted in Kimball, n. 30, op. cit., p-25.

34. Ibid, p-52.

35. Gazi Ibdewi Abdulghafour, n. 2, op. cit., p-17.

The World War I marked the end of the Ottoman Empire. Iraq became an area of hostilities. The British set out to occupy Basra which they captured in March 1917. As Turkish troops retreated, Mosul was occupied in 1918. The British interest in Iraq was nothing new. It already had trade route control. Then, under the Sykes-Picot Secret Agreement (16 th May 1916), Britain obtained Southern Mesopotamia and Baghdad. After the British occupation of Mosul, under the terms of the Clemenceau-Lloyd George agreement of December 1918, Mosul was included as a British sphere of influence. The partition plan of the Middle East was agreed by France and Britain, on 24 April 1920 at the San Remo Conference. In this Conference Britain was granted a mandate over Iraq and Palestine, and France was granted a mandate over Syria and present day Lebanon. In may 1920, Britain was awarded a League of Nations mandate over the territories of present day Iraq, and it was decided that Iraq should take in the former Turkish provinces of Baghdad (which was Arab and part of Sunni Muslim), Basra (which was Arab and Shi'i' Muslim) and Mosul (which was Kurdish and Sunni). This was the British policy which was adopted in order to control and rule Iraq.³⁶

Amir Faisal (Son of Sherif Hussain of Mecca, the leader of the Arab revolt against Ottomans), was installed as a monarch of new Iraq by the British on 27 August 1921. Nine years later, a treaty was concluded by the British High Commissioner and the Iraqi Foreign Minister on 30 June 1930, it provided for twenty-five years' alliance between the two countries. Under it Britain conferred independence on Iraq, agreed to support Iraq's admission to the League of Nations, and agreed to terminate the British mandate on the date of Iraq's entry into the League of Nations. In October 1932 Iraq was admitted to the League. Thus, Iraq became the first

36. *John Simpson*, n. 19, op. cit. p-24.

Arab State to attain independence. But its independence did not free Iraq from difficulties and the influence of foreign power. Following King Faisal's death in 1933 "a period of disequilibrium" set in. An anti-British group known as Akha al-Watani (National Brotherhood) was founded in 1930. It opposed and reflected all Anglo-Iraqi treaties. This party fairly dominated Iraqi politics after king Faisal's death. This group was opposed by a pro-British group led by General Nuri al-said. In addition to these two groups, the Ahali, or people's group, was founded which preached a moisture of socialism and democracy. In this political milieu of conflicting ideologies and interests of the Iraqi politicians, dissent and unrest also crept into army. General Bakr Sidqi led to a successful though short-lived, coup d'etat an 25 October 1936. This was the first military coup in the Arab world and Sidqi was considered as a national hero though King Gazi remained on the throne. Nine months later, in August 1937, Sidqi was assassinated by an army faction.³⁷

A series of coups by various army and political cliques punctuated the early years of World War II. During the mid-1950s the State was nominally headed by King Faisal II who was crowned at the age of 18 on may 1953. Recurrent struggle for power prevailed between Crown Prince Abdullah and Prime Minister Nuri al-Said. In the early hours of 14 July 1958 a group of military officers, headed by Brigadier Abdul Qasim, led a coup and took control of the radio station. The Ba'athists, supported the 1958 coup on the grounds that it would rid Iraq of British influence. But Qasim was not a genuine Pan-Arabist, nor did he introduce the kind of social and political reforms that the Ba'athists cherished. Finally, in February 1963, the Ba'athists overthrew Qasim in a violent coup and an ex-army officer Ahmad Hassan

37. Gazi Ibdewi Abdulghafour; n. 2, op. cit., pp-18-19.

Al- Bakr became the new Prime Minister. On 18 November 1963, a fresh and successful coup d'etat by Abdul Salam Aref overthrew the Ba'athist government in Iraq and assumed full control of the country. After the death of Salam Aref, in a helicopter crash in April 1966, Premier Abdul Rahman al-Bazzaz assumed the power of the President on a temporary basis. Later on, Abdul Razak Aref became the President of Iraq. His government was overthrown in bloodless coup on 7 July 1968, and Bakr was designated President of Iraq on 13 July 1968. He remained in power till July 1979. In the summer of 1979 Saddam Hussein became the President of Iraq.³⁸

Iraqi Claims Over Kuwait.—It is true that the border dispute between Kuwait and Iraq had been going on for a long time, even before the emergence of Kuwait as an independent state in June 1961.³⁹ In August 1990, when Saddam Hussein annexed Kuwait claiming it as a part of Iraq, he was just stating a claim which had been often reiterated by some earlier Iraqi leaders. "The shape of the Kuwait's boundary with Iraq originates with British imperial decisions at the beginning of the century and remains a source of dispute between the two states."⁴⁰

The Iraqi claim to Kuwait is based on two issues, namely the historical connection of Kuwait with the Ottoman Empire and the succession of the new state of Iraq to the territorial sovereignty of that Empire over Kuwait. What Iraq tried to do over the years was to prove that Kuwait was legally an integral part of the Ottoman Empire as it was administered as a district of the Wilayat of Basra, that, Iraq had succeeded to the Turkish territorial sovereignty over Kuwait, and thus Iraq had continued to maintain

38. *Ibid.*, pp-19-20.

39. R.P. Anand, n. 29, op. cit. p-1.

40. Lenore, G. Martin, "The Unstable Gulf," Lexington Books, Toronto, 1984, p. 45.

effectively and without interruption its sovereign claim over Kuwait.⁴¹

The border between Iraq and Kuwait had first been defined in an exchange of letters dated 9 April and 19 April 1923 between the al-Sabah ruler of Kuwait and Sir Percy Cox, then British High Commissioner for Iraq. Iraq's interest in Kuwait was expressed first by King Ghazi in the late 1930's, when the British still controlled Kuwait. King Ghazi wanted to consolidate and expand Iraq all over the Al Hilal-al Khaseeb (Fertile Crescent)-from Syria to the Arabian Gulf. He demanded that Kuwait should be made one with Iraq. Ghazi made a lot of efforts to induce union of Kuwait and Iraq, and he was rewarded when the advisory Council to the Kuwaiti ruler advocated such a move. But, under British pressure, the Sheikh of Kuwait dismissed and disowned the Council. The people of Kuwait are said to have voted for union. The British then successfully deterred the force Ghazi sent to invade Kuwait.⁴²

In another exchange of letters dated 21 July and 10 August 1932, Sheikh Ahmad and the Iraqi Prime Minister, Nuri-al-Said reaffirmed the existing frontiers between Iraq and Kuwait on the basis of the 1923 letters as follows :

"From the intersection of the Wadi-Al-Awja with the Batin and thence northwards along Batin to Safwan, thence eastwards passing South Safwan wells, Jabal Sanam and Umm Qasr leaving them to Iraq and so on the junction of the Khar Zobeir with Khar Abdulla. The Islands of Warbah and Bubiyan, Maskan, Failakah, Auhah, Kubber, Qaru and Umm-al-mardin appertain to Kuwait."⁴³

41. *Gazi Ibdewi Abdulghafour*, n. 2, op. cit. p-21.

42. *Ibid*, p-21.

43. Text of exchange of letters between Kuwait and Nuri al-said, 1932, for details See *Gazi Ibdewi Abdulghafour* ; n. 2, op. cit. Appendix II, No. 1.

On the other hand, in 1938, the Iraqi government had officially stated that Kuwait, as a part of the former Ottoman province of Basra, was an integral part of Iraq. The Zahoor radio station further added on 21 February 1939 that Iraq should annex Kuwait by force if peaceful means failed.⁴⁴ During the mid-1950s, when Kuwait raised the question of demarcating its borders with Iraq, it seemed as though the countries might agree to solve the border dispute in a manner favourable to Iraq. Under this proposal, Kuwait would have granted Iraq a 99-Year lease over the most northerly part of its territory, together with the Island of Warba. Iraq was to guarantee supplies of fresh water to Kuwait in exchange. "This was the first occasion when an Iraqi government linked the question of its border with Kuwait with certain territorial adjustments and demanded transfer of certain islands by its southern Sheikhdom. At the last moment the Amir rejected the idea or any change in the border."⁴⁵

In 1958, Nuri-al-Said suggested the accession of Kuwait during a meeting of Baghdad Pact. But the ruler of Kuwait, Abdullah al- Salem rejected this because Kuwait had no desire to join the pact. On 25 June 1961, just six days after Kuwait gained independence, Premier Qasim stated that "Kuwait is an integral part of Iraq. The expected Iraqi congratulations turned into a confrontation when the Iraqi Premier laid irredentist claims on the whole territory of Kuwait."⁴⁶ In a press conference on 25 June 1961, Qasim announced that he did not recognize a "forged treaty" imposed on Kuwait by Britain. He also claimed that Sheikh Mubarak was bribed to sign the treaty of 1899. He said that a decree would be issued appointing Kuwait's ruler as Qaimmagam

44. A.K. Ray, n. 15, op. cit. p-61.

45. A.H.H Abidi, "Backgrounder", in A.H.H. Abidi and K.R. Singh, ed., "The Gulf Crisis", Lancers Books, New Delhi, 1991, p-7.

46. Abdul Reda Assiri, n. 12, op. cit., p-3.

(Governor) of the Kuwait district of Iraq. He stated that Iraq's border extended from "North of 'Zago' (Zaikho) to South of Kuwait."⁴⁷ It was on 4 October 1963, that Iraq's first shortlived Ba'athist government (February-November 1963) recognized Kuwait's independence and sovereignty. It decided to establish diplomatic ties in return for some financial assistance.⁴⁸

Although Iraq was left with no alternative now except to recognize Kuwait as an independent state, it continued to make efforts to modify the border in its favour. Iraq was particularly interested in extending its shoreline and wanted Kuwait to cede or lease its Warbah and Bubiyan islands to Iraq. But Kuwait refuted Iraq's claims and the situation remained tense until the outbreak of Iraq-Iran war in 1980. The war provided an opportunity when, forgetting their past bilateral problems, Iraq and Kuwait reached an understanding to confront and contain Iran. Under the banner of Arab nationalism and solidarity, Kuwait offered substantial financial, political and logistic support to Iraq during its protracted war with Iran. Though Iraq desisted from raising the border issue with Kuwait so long as the Iran- Iraq war continued, as soon as cease-fire agreement was signed between the two belligerents in 1988, Iraq raked up the dispute again and even flexed its military muscle in October 1988. Iraqi units penetrated almost 20 kilometers inside the Kuwaiti territory, but the situation was retrieved and the Iraqi troops were withdrawn.⁴⁹

Struggling to overcome a critical economic situation because of his long, protracted and expensive war with Iran, confronted by disgruntled Iraqi people disillusioned by the assumed "victory

47. *United Nations Security Council (UNSC) Official Records, 957th meeting, New York, July 2, 1961, p.5.*

48. *Gazi Ibdeewi Abdulghafour, n. 2, op. cit. pp-24-25.*

49. *A.H.H. Abidi, n. 45, op. cit., p.15.*

" over Iran which did not yield any gain for their country,⁵⁰ and faced with a potential threat from alienated but strong minority communities of Kurds and Shi'is, President Saddam Hussein had on his hands a domestic situation as intense as a Volcano ready to burst. He desperately needed some cause to divert the attention of the extremely dissatisfied Iraqis to prove that, under his leadership, Iraq could regain its lost glory. He picked up Kuwait to get out of his quandary.⁵¹ In May 1990 at the Arab Summit at Baghdad, Saddam Hussein clearly identified Kuwait as an enemy by saying, wars can be started by armies, and great damage is done through bombing, through Killings or attempted coup. But at other times a war can be launched by economic means. To those countries which do not really intend to wage war against Iraq, I have to say that this is itself a kind of war against Iraq. By saying so Saddam wanted to remind Kuwait of his power if it refused Iraqi demand.⁵²

As a prelude to the present crisis, on 16 July 1990, Iraq's Foreign Minister Tariq Aziz delivered a letter to the Arab League Secretariat in Tunis charging Kuwait and the United Arab Emirates with "direct aggression" against Iraq launched by economic means. He accused Kuwait and the UAE of deliberately engineering a lower price for oil in order to damage the Iraqi economy.⁵³ According to Aziz this Kuwaiti strategy had begun as early as 1981 and it had cost the Arabs 89 billion dollars as Iraq established it. The oil 'stolen' from Iraq in Rumailah oil field was worth \$ 2.4 billion. The conviction that Kuwait with Saudi Arabia and American encouragement, was out to damage Iraq, was

50. *Lis Beyer*, "The World Closes in," *Time*, August 20, 1990, p. 16.

51. *R.P. Anand*, n. 29, op. cit. p-2.

52. *Gazi Ibdeawi Abdulghafour*, n. 2, op. cit. p. 26.

53. *R.P. Anand*, n. 29, op. cit., pp-2-3.

reinforced by the interception, of a telephone conversation on 1 July between King Fahd and the ruler of Qatar about the increase in Kuwait's production and the real effect it would have on Iraq's economy. Next day, on 17 July, which marked the anniversary of the Ba'athist seizure of power in 1968, Saddam Hussein accused Kuwait and UAE of exceeding production level set by the Organization of Petroleum Exporting Countries (OPEC) and driving down the price of crude. Hussein claimed that the move cost Iraq \$ 14000 million in lost oil revenue. Saddam Hussein also made a vague statement accusing certain Arab Countries of Joining anti-Arab conspiracy. It was on that day that Saddam Hussein in a speech on television first threatened the use of force to halt over production. He said "if words do not give us sufficient protection then we will have no option but to take effective action to put things right and ensure that our rights are restored."⁵⁴

This threat formed the basis of his act of 2 August 1990. Thereafter, events moved fast in quick succession. On 18 July, Hussein reasserted Iraqi claim to oil in a disputed border area inside Kuwait. The National Assembly of Kuwait voted to send various high officials to Arab capitals to present the Kuwaiti position. King Fahd of Arabia urged Saddam to observe restraint. On 19 July, the Kuwaiti Foreign Minister delivered a letter to the Arab League responding to the Iraqi charges and calling for Arab League arbitration on the border dispute. Kuwait offered to pay \$ 1 billion as compensation but refused to write off the war time loans. It put its paltry armed forces on alert on 20 July. The League's Secretary General arrived in Kuwait for consultations. The following day consultations also took place between President

54. Gazi Ibdewi Abdulghafour, n. 2, op. cit. pp-26-27. See also Richard A. Schwartz, "Encyclopaedia of the Persian Gulf War," (Mcfarland & Company, Inc, Jefferson, North Carolina and London, 1998, p-180.

Hosni Mubarak President Saddam Hussein and King Hussein of Jordan. On 22 July, the Iraqi Foreign Minister met Mubarak in Cairo. The NATO military attaches in Kuwait and Iraq, reported Iraqi tanks on railway wagons, 2000 to 3000 trucks and 30000 troops moving towards Iraq's southern border. Responding to such militarization, Saudi Arabia's military forces in northern and eastern command areas were put on alert. Mubarak travelled to Baghdad and Kuwait on 24 July in order to mediate. He proposed a meeting of Arab Foreign Ministers in Cairo. Saddam Hussein assumed Hosni Mubarak that Iraq did not plan to attack Kuwait. In the meanwhile, at an emergency OPEC Session in Geneva on 26 July an agreement was reached on production levels acceptable to all 13 members including Kuwait and UAE. Kuwait and UAE pledged to abide by the agreement. On 25 July the US ambassador, April Glaspie met Saddam Hussein while she assured the Iraqi President that "We have no opinion on Arab-Arab conflicts, like your border disagreement with Kuwait." She also adds that "President Bush is an intelligent man. He is not going to declare an economic war against Iraq." The US Senate on 27 July voted to cut off all farm credits to Iraq and to prohibit transfer of military applicable technology. On 31 July, intelligence source reported enormous Iraqi troop build up, with nearly 100,000 troops amassed along the border with Kuwait. Representatives of Iraq and Kuwait met in Jeddah (Saudi Arabia) to begin negotiations on the oilfields along the border, but talks broke down after two hours. The meeting was resumed on 1 August but it also collapsed as the Iraqi representative left abruptly for Baghdad. Iraqi troops were concentrated on the Kuwaiti border.⁵⁵

On August 2, at 2. A.M. armoured divisions from Iraq's

55. *Ibid*, p-27, and *Ibid*, p-181 See also Jim Hoagland's column reproduced in International Herald Tribune, September 14, 1990.

Republican Guard overran a Kuwaiti brigade guarding the border. The armoured divisions then continued on to the capital, Kuwait City, about 50 miles to the South. At the same time Republican Guard special forces attacked Kuwait City by helicopter, and sea commandos took command of the Southern Coastal road leading to the Capital. By 5 : 30 A.M. the armoured divisions arrived and the battle for the city began. By 2:20 P.M. the battle concluded and by then Iraq controlled the capital city. The Iraqi troops then continued on to the Saudi border, where they established defensive positions. Iraq announced that it had sent its troops to support a popular coup, and it would withdraw when the situation in Kuwait became stable and the new, provisional government asked it to remove its troops. The "transitional free government announced on Kuwaiti radio that the emir had been deposed and the National Assembly dissolved. The emir, Crown Prince Saad as-Sabah (who was also the prime minister), and the other Kuwaiti ministers escaped ahead of the invading Iraqi forces into Saudi Arabia.⁵⁶

In response to the invasion, France, Britain, and the United States condemned the invasion and called for an immediate Iraqi withdrawal, the freezing of Iraqi and Kuwaiti assets, and a moratorium on weapons deliveries to Iraq. The Soviet Union also called for a prompt withdrawal and announced that it would immediately cease its arm sales to Iraq.⁵⁷

Deeply concerned about serious threat to its interests, on 2 August 1990, the United States condemned Iraq's invasion of Kuwait as "naked aggression," froze Iraqi and Kuwaiti assets in

56. *Richard A. Schwartz*, n. 54, op. cit. pp-181-82. For more detail, See, Peter Vine and Paula Casey, "Kuwait : A Nation Story," Immel Publishing Ltd, London, 1992, pp-133 to 153.

57. *Ibid*, p-182.

the United States and sent additional warships to the Gulf.⁵⁸ Hardly few hours had elapsed since the Iraqi invasion of Kuwait, when the United States called for an emergency meeting of the Security Council under Chapter VI, Article 35(1) which provided that "any member of the UN may bring any dispute, or any situation of the nature referred to in the Article 34, to the attention of the Security Council or of the General Assembly. During the emergency session of the Security Council, both Iraq and Kuwait presented their own cases. Kuwait called the invasion as an "unwarranted invasion "by "a sisterly country" (Iraq) against a "peace loving country," (Kuwait). The representative to the UN stated that if the Security Council could not enforce Iraqi withdrawal, "no country will be safe after this and the security, sovereignty and territorial integrity of every state will be jeopardized."⁵⁹ Iraq attempted to Justify its action, stating that it was invited by a group of revolutionaries who had successfully staged a coup d'etat and Iraq was staying on to assist the "free provisional government of Kuwait" to restore order.⁶⁰ Iraq installed a puppet government under the leadership of Alaa Hussein Ali. Ostensibly a colonel in the Kuwaiti Army. Ali was actually an Iraqi military officer and the former head of Iraq's antimissile programme.⁶¹ The Council then passed the Resolution 660 in August 2, under the terms of Articles 39 and 40 of the Chapter VII of the U.N. Charter, which stated : "The U.N. Security Council condemns the Iraqi invasion as a breach of international peace and security, demands the immediate and unconditional withdrawal of Iraqi forces from Kuwait and calls upon Iraq to begin

58. R.P. Anand, n. 29, op. cit. p-4.

59. Security Council, *Official Records*, (Provisional), verbatim, 2932, Mtg. 2 August 1990, p. 6.

60. Gazi Ibdeewi Abdulghafour, n. 2, op. cit. p. 32.

61. Richard A. Schwartz, n. 54, op. cit. p.182.

immediate, intensive negotiations." Resolution 660 was passed by 14 members of the Security Council,⁶² Yemen, the only Arab Country represented on the Security Council as a non-permanent member, did not take any position. The Yemenis representatives in the Council stated not to have received any instructions. Yemen was thus the first Security Council member which differed from the normal voting pattern.⁶³

Article 25, of Chapter V, provides that resolutions are binding on member states and their violation will result in imposition of sanctions. Against all logic, Iraq ignored U.N. Security Council Resolution 660 and called it, *Jaaer wa gher Adel* (iniquitous and unjust), taken "without allowing itself sufficient time to comprehend the situation and to acquaint itself with the facts from parties concerned."⁶⁴ Kuwait welcomed the resolution and urged the Security Council to impose sanctions against Iraq if it refused to withdraw.⁶⁵

Meanwhile, the United States, the European Community, Japan, Canada and the Soviet Union had already declared measures like freezing assets, ban on oil supplies etc., to widen the net and seek collective endorsement of those unilateral measures. As a result, "the Iraqi representative vainly warned in the Council that any move for economic sanctions, instead of helping resolution of the crisis, would excacerbate it and might create a heavy, negative impact on the economics of the developing countries."⁶⁶ Four days later the Security Council, "deeply

62. U.N.S.C. Resolution 660 of 2 August 1990.

63. Gazi Ibdeewi Abdulghafour, n. 2, op. cit. p. 32. See also Prof. M.S. Rajan, "India And International Affairs. A Collection of Essays," Lancers Books, New Delhi, 1999, p-257.

64. Letter from the Foreign Minister & Deputy Prime Minister of Iraq to the Security Council, Doc.S/21503, 23 August 1990.

65. R.P. Anand, n. 29, op. cit. p-6.

66. SCOR (Prov), Verbatim, 2932nd mtg., 6 August 1990.

concerned" that Iraq had failed to implement Resolution 660, decided to impose a comprehensive package of economic sanctions.⁶⁷ Acting under Chapter VII Article 41 of the Charter, the Council in its resolution 661 adopted on 6 August 1990, by 13 votes to 0 with two abstentions (Cuba and Yemen), the Council imposed world-wide oil embargo and comprehensive sanctions banning economic and financial dealings with Iraq and Kuwait and prohibited imports from and exports to the two oil-rich Gulf Countries, especially the supply of military equipment and weapons. But it provided for exemptions from sanctions foodstuffs and medical supplies under "humanitarian circumstances." The states were also called upon not to prohibit assistance to the legitimate government of Kuwait, to protect assets of that government, while not recognizing any regime set up by the occupying power. The resolution also set up a Sanctions Committee consisting of all members of the Council to oversee the progress of implementation of the sanctions.⁶⁸

Though Article 41 was not mentioned in Resolution 661, there is no question that these economic measures were taken under that Article. The resolution was a collective endorsement of these unilateral measures. It may also be recalled that there were two previous instances of such sanctions being imposed on Southern Rhodesia in 1967 and South Africa in 1977 but the sanction did not work as expected.⁶⁹ This time, the US and its allies took upon themselves to interdict all ships approaching Kuwait or Iraq and

67. R.P. Anand, n. 29, op. cit. p-7.

68. U.N.S.C. Resolution, 661, of 6 August 1990.

69. Schrijver, "The meaning and operation of sanctions and other measure short of the use of force" in Symposium on "The Prospective Role of the United Nations with the International use of force in post-Cold War period: An analysis in light of the Persian Gulf Crisis," University of Georgia, School of Law, March 1-2, 1991, in Georgia Journal of International and Comparative Law, Vol 22:9, 1992, p. 44.

refused to let them proceed. This led to a controversy as to whether it was legal on the part of the US to indulge in interdiction without UN's authorization ? On 17 August Perez De Cuellar described the US naval blockade of Iraq as a "breach of the UN Charter."⁷⁰

Defying the Security Council resolutions, Saddam Hussein formally annexed Kuwait on 8 August 1990, claiming that it was a part of Iraq. In its resolution 662 of 9 August 1990-which was adopted unanimously-the Security Council declared the Iraqi annexation of Kuwait null and void and announced that its claim had no legal validity.⁷¹

The worst hit countries by this crisis were the Arabs. This act of aggression by Iraq divided the Arab world but stunned Arab governments, however, maintained silence, weary of the arsenal Iraq had amassed to make it the most powerful nation in the region. Only Syria voiced concern calling for an immediate Arab Summit. The Arab League's Ministerial Council which met in Cairo on 3 August condemned the Iraqi aggression. President Hafez al-Assad of Syria desired an Arab solution of the crisis. Another attempt to hammer out a solution was made by the Arabs on 9 August when the Arab leaders met in Cairo. Talks continued on 11 August when the League voted to send on Arab peace-keeping force to Saudi Arabia which felt threatened. In fact, once the American troops were invited by Saudi Arabia, and were deployed, all hopes of finding an Arab solution to the crisis were dashed to the ground.⁷²

Iraq hoping to forestall an American attack, took all foreign nationals in Iraq and Kuwait into custody and confined them in strategic places to be used as human shields. This Iraqi action

70. *Breach of UN Charter*, *Times of India*, New Delhi, 18 August 1990.

71. U.N.S.C. Resolution 662 of 9 August 1990.

72. Gazi Ibdewi Abdulghafour, n. 2, op. cit. p-34.

led to a unanimous Resolution 664 passed by the Security Council on 18 August 1990. It demanded that Iraq facilitate immediate departure from Iraq-Kuwait of third country nationals (Asian and others), that no action be taken to Jeopardize their safety, security or health, and that Iraq rescind orders to close diplomatic and consular missions in Kuwait and to withdraw immediately their personnel-in respect of all which Iraq had created acute problems.⁷³

While addressing the people of Iraq on 19 August Saddam Hussein blamed the US and Britain for the plight of the trapped foreigners. He offered to release foreign detainees if President Bush offered written guarantees that the US forces will be withdrawn from Saudi Arabia and the economic boycott against Iraq would end. Bush referred to the detained foreigners as "hostages." On 22 August foreign ministers of the European Community reflected Iraq's 24 August deadline for the closure of all foreign embassies in Kuwait. On 24 August, Mikhail Gorbachev sent an urgent message to Hussein warning him that the Gulf situation was "extremely dangerous." Gorbachev signalled that he was ready to back additional measures to toughen the UN embargo against Iraq.⁷⁴

On 25 August 1990, by Resolution 665, adopted by 13 votes to 0 (with Cuba and Yemen abstaining), the Council called on States "cooperating with the Government of Kuwait" that had maritime forces in the area, to use such measures as might be necessary "to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation" of embargo decision. This was virtually enforcement of a naval blockade and was understood

73. U.N.S.C. Resolution 664 of 18 August 1990.

74. Gazi Ibdebi Abdulghafour, n. 2, op. cit. p-35.

to authorize states to use naval force to halt the shipping in question.⁷⁵ Some members of the Council objected to it. Yemen complained that "for the first time in the history of the United Nations, and particularly in the history of the Security Council, nuclear powers are being granted to undertake unspecified actions, without a clear definition of the Security Council's role and powers of supervision over those actions."⁷⁶ And the Cuban representative (agreeing with the Yemeni argument) questioned the legitimacy of the proposed action under Chapter VII of the Charter, without, however, expressly stating so.⁷⁷

Columbia's representative made a debatable point that through Resolution 665, the Council would be establishing "a naval blockade, even though it may not say so, and that though the Council may not say so either-it is acting pursuant to Article 42 of the Charter"⁷⁸ while France stressed that it did not imply "a blanket authorization for the indiscriminate use of force." China did not favour using force in the name of the United Nations.⁷⁹ Needless to say, the US and UK representatives were even more euphoric. The particular Council's meeting was "truly historic in the life of the Organizations", said the US representative. The authority granted in the resolution "is sufficiently broad to use armed force." Naturally, for him it was "a historic and significant decision." According to him, the resolution applied (without, of course, so specifying) mandatory sanctions against maritime shipping approved in the earlier resolution 661.⁸⁰

75. U.N.S.C. Resolution 665 of 25 August 1990.

76. *Prof. M.S. Rajan*, n. 63, op. cit. p-261.

77. S/PV/2938, 25 August 1990.

78. S/PV/2938, 25 August 1990.

79. S/PV/2938, 25 August 1990.

80. *Prof. M.S. Rajan*, n. 63, op. cit. p-262.

Many representatives (both those voting for or against the resolution) still urged intra-Arab resolution of the conflict. They demanded UN action against Iraq for its invasion of a small state, as though such aggression had never before taken place since the Second World War, ignoring, of course, US invasions of Grenada, Panama, or abetting ultras against others *e.g.*, Nicaragua. Putting in perspective the euphoric claims of the United States and its allies, the Malaysian spokesmen observed that resolution 665 "crosses a clear line from applying sanctions to readiness to apply force if necessary in pursuit of compliance." Malaysia, like some others, would have preferred "a more assertive and prominent role" for the World Organization itself, *i.e.*, instead of authorizing use of force by some unspecified member nations.⁸¹

But Iraq continued to refuse to comply with the UN Security Council resolutions. It refused to permit food shipments to go directly to foreign nationals trapped in Iraq and Kuwait. This led the Security Council to pass another resolution 666, on 13 September 1990 which set procedures for determining the extent of humanitarian need for food supplies among the civilian population of Iraq and Kuwait. The vote was 13-2-0 with Cuba and Yemen voting against.⁸²

In response to the Iraqi order of closure of the diplomatic missions in Kuwait and the entry of Iraqi troops into the French Ambassador's residence in Kuwait, the UN Security Council unanimously passed Resolution 667 on 17 September 1990, condemning Iraq's violation of the diplomatic premises in Kuwait. It demanded the immediate release of all foreign nationals.⁸³ Iraqi National Assembly condemned Resolution 667 and said it "is based

81. S/PV/2938, 25 August 1990.

82. U.N.S.C. Resolution 666 of 13 September 1990.

83. U.N.S.C. Resolution 667 of 17 September 1990.

on false information and the Security Council has not, in the first place, tried to make sure of the facts." The Soviet Union backed an air embargo and called on the foreign minister of the five permanent members of the Security Council to act. The US Defence Secretary Dick Cheney said that he had obtained permission from the UAE for all US military forces to operate from the bases there. On 20 September, the Iraqi government warned that it would launch an all-out war against multi-national forces arrayed defensively against Iraq if it judged that the UN trade embargo was about to "strangle" the Iraqi people.⁸⁴ On 24 September while addressing the General Assembly, the French President, Francois Mitterrand, condemned Iraq for its invasion of Kuwait and outlined a four-stage peace plan for resolving the Gulf Crisis. The Security Council passed Resolution 669 on 24 September, 1990, ordered restriction commonly to enquire into the request from the countries, economically affected due to Iraq's embargo. The vote was 15.0.0.⁸⁵

Inspite of all this, Saddam Continued to stress that Kuwait was a part of Iraq and stated "we will not give it up even if we have to fight for it thousand years."⁸⁶ The United States and its friends continued to escalate the pressure of action against Iraq. They moved (on 25 September 1990) a draft resolution (S/21816) (by Canada and eight others) seeking to enforce even more comprehensive sanctions against Iraq. It was passed as resolution 670 (25 September 1990), by a vote of 14 to 1, which required each member state to impose an air transport embargo against Iraq and occupied Kuwait. It called for air embargo, allowed the possibility of taking action against state evading the embargo, and re-affirmed the liability of Iraq and Iraqi officials for acts taken in

84. *Gazi Ibdewi Abdulghafour*, n. 2, op. cit. p-37.

85. U.N.S.C. Resolution 669 of 24 September 1990.

86. *Gazi Ibdewi Abdulghafour*, p. 37.

contravention of the fourth Geneva convention. The resolution also included provisions to strengthen compliance with the economic sanctions. It authorized the Council's Sanctions Committee to continue monitoring the air embargo and also to continue gathering information from all members on their measures regarding trade and financial aspects of the embargo. The vote was 14.1.0, Cuba voted against. Speaking in the Security Council on the air embargo resolution, the Chinese Foreign Minister, Qian Qichen declared that "the use of force in any way is unacceptable to us."⁸⁷

In Connection with the embargo, the Council took account of Article 50 of the Charter.⁸⁸ That Article provides that any state which finds itself confronted with special economic problems arising from preventive or enforcement measures taken by the Security Council shall have a right to consult the Council regarding a solution of those problems. This "relief" provision was invoked by twenty-one states that had suffered from the trade embargo.⁸⁹ They included oil importing countries dependent on Iraqi oil and countries that made substantial exports to Iraq and Kuwait. Recommendations of the Council's Committee on Sanctions urged states to increase financial and development assistance to the countries injured by the embargo. The UN specialized agencies and other international organizations were also asked to increase their aid to those countries. The Council did not arrange for any direct financial reimbursement to the claimant countries, but it declared that Iraq is liable to pay compensation for damage to Kuwait and other countries in connection with the invasion and occupation.⁹⁰

87. U.N.S.C. Res. 670 of 25 September 1990.

88. U.N.S.C. Res. 669 24 September, 1990.

89. UN Docs. S/22021 (1990), and S/22193 (1991).

90. U.N.S.C. Res. 674, Paras. 7, 8 (Oct. 29, 1990) ; SC Res. 686 (Mar. 2, 1991).

In Resolution 674 of 29 October 1990, Iraq was held responsible for damages relating to invasion of Kuwait, including human rights violations. The resolution also demanded an immediate end to hostage taking and called on Iraq to ensure immediate access to food, water and protection of Kuwaitis and foreign nationals in Iraq and Kuwait. The resolution also asked the Secretary General to undertake diplomatic efforts to reach a peaceful settlement on the basis of resolutions 660, 662 and 664. The vote was 13-0, with Cuba and Yemen abstaining.⁹¹ On the same day, the UN Secretary General stressed the need for diplomatic solution of the crisis. But Iraq continued to stick on the same position. A state of deadlock was reached when Iraq ignored all the resolutions of the UN Security Council. Therefore, on November 28, 1990, Resolution 677 was passed which directed the Secretary General to ensure the safe keeping of Kuwait's population statistics. It condemned the Iraqi attempt to alter the demographic composition of the population of Kuwait and to destroy the civil records of the Kuwaiti government.⁹²

Thus, till now all the UN Security Council resolutions went unheeded, and the sanctions imposed by the UN could not yield the desired effect. On 29 November 1990, the use of force was endorsed by the Security Council when it adopted Resolution 678 under Chapter VII, of the UN Charter. This resolution was voted 12-2-1 in which China abstained and Cuba and Yemen opposed it. Paragraph 1, of the resolution reiterated the demand for Iraqi withdrawal as stated in the earlier Security Council resolution on Kuwait. Paragraph 2, authorized "member states to co-operate with the government of Kuwait, unless Iraq, on or before 15th January 1991, fully implements as set forth in paragraph 1 above, the

91. UNSC. Res. 674 of 29 October 1990.

92. UNSC. Res. 677 of November 28, 1990.

foregoing resolution, to use all necessary means to uphold and implement Security Council Resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area; and requests all states to provide appropriate support for the actions undertaken in pursuance of Paragraph 2 of the resolutions.⁹³

It was amply clear that necessary means included the use of armed force to bring about Iraq's withdrawal and compliance with other provisions of the twelve resolutions adopted between August 2 and November 29. As of January 16, Resolution 678 was treated as the legal basis of the large-scale military action by the coalition of states that brought about the defeat of Iraq at the end of February 1991 and its withdrawal from Kuwait. The precise Charter basis of Resolution 678 was somewhat uncertain. The resolution itself declared that the Council was acting under Chapter VII, but it did not specify which article of Chapter VII. It thus left several possibilities open to conjecture. One was that Chapter VII in general provided an adequate legal basis. Another view was that a resolution authorizing armed force necessarily came within Article 42 and had to meet the requirements of that article. Still a third position was that the authorization came properly within the scope of Collective self-defense and that the Council was exercising its authority under Article 51 (which is also in Chapter VII).⁹⁴

The Security Council adopted the resolution under Chapter

93. UNSC Res. 678 of November 29, 1990. For the text of these resolutions See Documents," United Nations Security Council Resolutions Relating to the Crisis in the Gulf", Strategic Studies, Vol. XIV, Nos 1-2, Autumn/winter 1990-91, pp. 114-127.

94. Oscar Schachter, "United Nations Law in the Gulf Conflict," in American Journal of International Law, Vol. 85, No. 3, July 1991, Published by American Society of International Law, p-459.

VII of the UN Charter which lays down the complete procedure in Articles 42 to 49 for the use of armed forces to restore international peace and security. Article 42 authorises the Council to take action by resorting to use of armed force, provided the action under Article 41 fails to prove adequate. Thus, it implies that only if embargo and blockade has failed (Article 41) military force could be resorted to Article 43 requires members of the UN to make available to the Council their armed forces. Article 44 enables the Council to call for arms aid from non-members after it had decided to use force. Article 45 speaks about the process where it becomes necessary to take urgent military measures. Article 46 stipulates that plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee. Article 47 deals with the establishment and functioning of Military Staff Committee. Article 48 directs that action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the UN or by some of them as the Security Council may determine.⁹⁵

In order to meet this situation there is another provision made by the United Nations. Article 106 stipulates as long as special agreements are not concluded, the function of the Organisation as determined in Article 42 may be exercised by the Great Powers after consultation with one another and as occasion requires with other members of the UN. Article 106 authorises the Great Powers to take joint action on behalf of the Organisation only as long as the Security Council has not expressed the opinion that enough special agreements have come into force to enable it to begin the exercise of its responsibility under Article 42. Any action which these powers deem necessary for the purpose of maintaining

95. See, Articles 42 to 49 of the UN Charter.

international peace and security is covered under Article 106. However, joint action involving the use of armed forces is voluntary and may take place only after the Security Council has determined that an enforcement action involving the use of force is necessary.⁹⁶

The Charter of the UN nowhere permits the use of armed force by one member against another. Rather the whole Charter prohibits the use of force. Only the Security Council is permitted to authorize use of armed force against a member of U.N. It may take help from members but the action must be a Security Council action. It would thus be a violation of the UN Charter to allow individual members to use armed force against anyone and more so under the excuse of doing a job which the Security Council alone has been authorised to do under the UN Charter. Moreover, Resolution 678 did not refer to the establishment of the Military Staff Committee, which is incumbent under Article 47. Another aspect which was not in conformity with the Charter was that there was no special agreement with member states to create a military force, nor had the permanent members consulted each other or other UN members prior to launching the Gulf operations.⁹⁷

It is also mentioned in Chapter VII that all forces of the UN must be operated under the UN flag. This was not mentioned in Resolution 678, nor was it carried out in the Gulf operations. In fact, this resolution authorized use of arbitrary force by some members. The manner of military deployment or the operational angles were never discussed or stated. It is therefore void ab initio. The coalition forces did not don blue UN uniforms, did not fight

96. Prof. R.B. Singh, "Legal Aspects of the Gulf War", in the Indian Journal of Strategic Studies, n. 15, op. cit. pp-121-122.

97. Gazi Ibdewi Abdulghafour, n. 2, op. cit. p-41.

under the UN flag, and were not under the joint military command of the Security Council, thus, this could not legitimately be called a war waged by the UN.⁹⁸

The legitimacy of Resolution 678 was questioned on a numbers of grounds :

I. It was in contravention with the spirit of the UN Charter which promises to eliminate "the scourge of war."

II. Resolution 678 made no mention on how long the application of "all necessary means "can continue and the type or amount of forces that were to be used.

III. It ignored the provisions mentioned in Chapter VII of the Charter which specifically empower the Security Council (not any member state of the UN) to indulge in use of force and to conduct the operations under the Military Staff Committee and under the UN flag.

IV. It was also in contravention of Article 27(3) which requires that an important resolution of the Security Council must have the concurrence of the five permanent members. Since China abstained it implied that it did not concur and as such meant that Resolution 678 was not perfect and its follow up action was not legitimate. This point was realized during the Korean Crisis when in the three successive resolutions of the Security Council which sanctioned enforcement measures against North Korea were adopted, the Soviet Union boycotted the Council. On the basis of Articles 27(3) which asks for "Concurrence" of permanent members, the Soviet Union challenged the legality of these resolutions in the 482nd meeting of the Security Council. It maintained that because of its boycott the resolution had no legal force.⁹⁹

98. See Gurdip Singh, Abdication by UN; Hindustan Times, 14 March 1991.

99. Gazi Ibdeewi Abdulghafour, n. 2, op. cit. p-42.

There are some more controversial issues regarding the legality of Resolution 678. It is pointed out that it was an imperfect legal form vis-a-vis the Charter. The preamble to the resolution stated that this decision of the Security Council was taken under Chapter VII of the Charter. But the same Chapter includes, besides the provisions of collective measures by the UN (Article 41 to 42) provision on self-defence (Article 51). Some scholars have interpreted this provision to mean that the Council could allow the coalition to take collective action against Iraq on behalf of the UN in defence of Kuwait. So, it was felt that the UN was merely indulging in a formality by giving its blessings to an operation which was based on the right of self defence. Thus, it was a legal operation.¹⁰⁰

It has been argued that the procedural validity of Resolution 678 could be questioned on the ground that China, a permanent member of the Security Council, abstained from the vote. According to Article 27, Paragraph 3, of the Charter decisions of the Security Council on non procedural issues must be made "by an affirmative vote of nine members including the concurring votes of the permanent members." While the English text as well as Russian and Chinese texts are not entirely clear about the effect of absence from the Security Council meeting, or abstention from vote, of one or more permanent members on the validity of a decision taken by 9 affirmative votes without the concurring votes of all the permanent members, the French and the Spanish texts of Article 27(3) leave little doubt on the subject. Omitting the word "Concurring," the French and Spanish texts require the affirmative votes of 9 members including "the votes" of all the permanent members.¹⁰¹

100. *Ibid*, pp-42-43.

101. *R.P. Anand*, n. 29, *op. cit.* p-17.

The latter French and Spanish texts clearly imply, it is pointed out, that an abstention is to be deemed a veto. Since all the official texts are equally authentic according to the Charter (Article 111), they must be reconciled. As the French and Spanish texts are clearer, it is contended, the others must be read to conform to them. Therefore, there is said to be no alternative to the conclusion that abstention by a permanent member on a non-procedural vote constitutes a veto. Resolution 678, therefore, cannot be said to have been validly adopted because of the abstention of China.¹⁰²

It must be stressed, however, that in the practice of the UN, scores of resolutions, apparently requiring Concurrent votes of the permanent members under Article 27 (3) have been adopted by the Security Council with at least one permanent member abstaining and yet accepted as valid. In these cases every one of the permanent members has at one time or another admitted the legality of the Council's adoption of resolutions requiring its concurrence despite the fact of its own abstention.¹⁰³ Although in Several Cases, the validity of a resolution adopted by such abstentions have been challenged, it is important to note that "no resolution passed by a majority of seven (or nine) has ever been held invalid by reason merely of abstention of a permanent member."¹⁰⁴ It seems, therefore, as Professor Leo Gross argues, that though literally inconsistent with Article 27(3), the practice of abstention "may be deemed to be in accordance with the principle of unanimity of the permanent members," which

102. *Ibid*, p-17. See also John Quigley. "The United States and the United Nations in the Persian Gulf War : New Order or Disorder." Cornell International Law Journal, Vol. 25 1992 p. 29 and See Article 33(4) of the Vienna Convention of the Law of Treaties.

103. *Julius Stone*, "Legal Controls of International conflict London, 1954, p. 204.

104. *Ibid* , p. -206.

underlies that paragraph.¹⁰⁵

Scholars who regard the Resolution 678 as legally valid also maintain that Article 42's provisions do not require that the UN has to control the military operation. This Military Staff Committee is moribund now and need not direct the military operation. More so because the UN did not possess the machinery for controlling a military operation of a scale as the operation Desert Storm. Thus, there is no reason in law why the UN should restrain a group of states either to use force or to decide a command structure amongst themselves. "The UN action seemed to be based more on Article 43 than 51." the action could not be confined only to the doctrine of self-defence as enshrined in Article 51. "Security Council was taking a form of collective action rather than confirming its approval for a self-defence action." But if this use of military force against Iraq is called enforcement action and not collective self-defence then it will lead to some legal consequences. For instance, the use of force will not be confined to defence or liberation of Kuwait, but it would include all measures to restore international peace and security in the areas. In this way, the coalition force was given an opportunity of not only indulging in complete destruction of Iraq but also to end the threat to international peace and security.¹⁰⁶

According to Professor Gross, the practice of the Security Council and the attitude of the Assembly amounts to this that "abstention is not a fatal defect as long as there is agreement in the Security Council and particularly among its permanent members, not to regard it as such."¹⁰⁷ When permanent member

105. Leo Gross, "Voting in the Security Council: Abstention from Voting and Absence from Meetings," Yale Law Journal, Vol. 60, 1951, p-225.

106. Gazi Ibdeawi Abdulghafour, n. 2, op. cit. pp-43-44.

107. Leo Gross, n. 105, p-227.

merely abstains, the argument goes, it is impliedly agreeing to the operation of the resolution without its own vote for otherwise it would have vetoed. It itself agrees, in other words, not to regard its abstention as vitiating the vote. Although all this practice cannot be ignored, still it cannot be said to have changed the rule of Article 27, Paragraph 3. It is always possible in future for a permanent member, according to Professor Stone, to challenge the validity of a resolution if it abstains and argue that its abstention defeats the vote.¹⁰⁸

What Professor Gross thought inconceivable, as Professor Quigley Says, "the Security Council did in Resolution 678."¹⁰⁹ Although China did not consider its abstention on Resolution 678 to constitute a veto, nor did the other Council members, that cannot resolve the matter. Explaining its abstention on Resolution 678, China said it could not vote in favour because it construed the resolution as authorizing the use of military force which it opposed and preferred a peaceful solution. But it abstained, instead of voting in the negative, because it supported the resolutions call on Iraq to comply with previous Council resolutions. This explanation by China, therefore, Quigley rightly points out, meant that China opposed the use of military force against Iraq and its vote cannot be construed as an affirmative vote." Under these circumstances, the validity of Resolution is seriously questionable and cannot be accepted.¹¹⁰

In adopting Resolution 678 of November 29, 1990, implicitly authorizing the use of force against Iraq in response to Iraq's August 2, 1990 invasion and subsequent occupation of Kuwait, the United Nations Security Council made light of fundamental

108. *Julius Stone*, n. 103, op. cit. p-207.

109. *John Quigley*, n. 102, op. cit. p. 32.

110. *R.P. Anand*, n. 29, op. cit. pp-19-20.

UN Charter precepts and thereby flirted precariously with" generally accepted principles of right process."¹¹¹ It has generally been assumed that the Council's authority to apply armed force under Chapter VII can only be found in Article 42. This assumption was also evidenced in statements made by some of the Security Council members. This is not surprising. For one thing, Article 42 is the only provision in the Charter that expressly empowers a UN organ" to take action by air, sea, or land forces "as may be necessary to maintain or restore international peace and security. Moreover, Article 39, the "basic" provision of Chapter VII, authorizes the Council to "decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." A reasonable inference is that if the Council decides on measures, they should be under either Article 41 (*i.e.*, not involving force) or Article 42 (if military action is taken).¹¹² Hence, if Resolution 678 is a "measure decided on "by the Council involving armed force, Article 42 would necessarily apply.

It has been suggested that the resolution authorizing force is incompatible with the requirement of Article 43 that the Security Council conclude special agreements with member states for the provision of armed forces and facilities to be on call for Security Council action. On the other hand no explicit language in Article 42 or in Articles 43, 44, and 45 (which refer to the special agreements) precludes states from voluntarily making armed forces

111. *Burns H. Weston*, "Agora : The Gulf Crisis in International and Foreign Relations Law, Continued," in *American Journal of International Law*, Vol. 85, No. 3, July 1991, Published by American Society of International Law, pp-516-17.

112. *Hans Kelsen*, "The Law of the United Nations," *Frederick A. Praeger*, New York, (1950) pp-744-45. See also *Russett & Sutterlin*, "The U.N. in a New World Order," *Foreign Affairs.*, Spring 1991. p-69 (assumes Article 42 applies to Resolution 678).

available to carry out the resolutions of the Council adopted under Chapter VII. The voluntary response to the resolutions in the Korean action is in point. In that case, Sixteen States provided armed forces and military facilities to assist South Korea in repelling the North Korean aggression. They did so in response to a recommendation, and no legal argument was made by any government that a mandatory decision was necessary.¹¹³ Article 48 was not applicable, however, to the use of armed force authorized by the Council in Resolution 678. For it was clear under that resolution (as well as under Resolution 665 on the naval blockade) that the military measures were not required action. Hence, by its terms Article 48 did not apply to such permissive action, whereas it did apply to the mandatory economic and transportation embargoes required of all members.¹¹⁴

To put it in another way, Resolution 678 may be read as consistent with both Article 51 and Article 42. In regard to the later, the Council's resolution is an example of "action" taken by the Council involving the use of military forces. The word "action" does not have to mean that those armed forces are under the control or command of the Council. That such command and control was contemplated under other articles of Chapter VII should not be read into Article 42. Recognizing Article 42 as a relevant source of authority together with Article 51 would not in itself enhance the Council's authority over the armed forces. It should not be forgotten that Article 51 gives the Council full authority and responsibility in cases of self-defense to take measures to maintain and restore international peace and security.¹¹⁵ One reason for treating Resolution 678 as falling within Article 51 is that it authorized the group of states identified

113. *Oscar Schachter*, n. 94, op. cit. pp-463-64.

114. *Ibid.*, p-463.

115. *Ibid.*, p. 462.

as cooperating with Kuwait in resisting the invasion to take the necessary means to achieve the objectives previously declared by the Council and, in addition, to restore peace and security in the area. It is significant in this respect that the Council did not decide that the armed forces of the cooperating states were to be placed at the disposal or under the control of the Security Council. No United Nations command was set up; no reference was made to a United Nations force or to use of the UN flag. These were the features of the UN-authorized force in Korea, their omission here is further evidence that the Security Council intended to leave the choice of means, timing, command and control to the participating states.¹¹⁶

It may be asked why a new resolution was required when the Council had already affirmed the right of Collective Self-defense soon after the invasion. Moreover, Collective Self-defense action did not require Council approval or authorization ; member states were free anyway to use force against the aggressor within the limits of Self-defence. However, the resolution served the political purpose of underlining the general support of the United Nations for the military measures if Iraq did not withdraw before January 16, 1991. In addition, the resolution, supported by all of the cooperating states committed to collective action, clarified the objectives of the collective defence action.¹¹⁷ As Professor Glennon points out, Resolution 678 is in fact permissive, like Resolution 83 of June 27, 1950, adopted by the Security Council during the Korean War. It imposes no legally binding obligation under Article 25 of the Charter. In Glennon's words, it "merely exhorts, authorizes or recommends," leaving to the member states the decision whether to cooperate in the effort of the allied coalition

116. *Ibid.*, pp-459-60.

117. See T. Friedman, 'Allies Tell Baker Use of Force Needs U.N. Backing,' New York Times, Nov. 8, 1990. at A 14, Col. 1.

to liberate Kuwait. The word "authorizes" in Resolution 678 should not therefore be considered to transform a military campaign of self-defense into an enforcement action.¹¹⁸ According to several analysts, military action under Resolution 678 must be characterized as Collective Self-defence under Article 51 of the UN Charter and "approved, encouraged, and blessed by the Security Council."¹¹⁹

On 5 December 1990, four nonaligned states, Columbia, Cuba, Malaysia and Yemen, all members of the Security Council, submitted a "peace plan" (S/21986) for the Gulf, proposing a 'UN Peace-Keeping Force' to oversee withdrawal of Iraqi forces from Kuwait. The plan was to pre-empt the outbreak of war, lifting of sanctions withdrawal of foreign troop (of the US and its allies) from the region immediately after full withdrawal of Iraqi troops. The Secretary General was to oversee diplomatic efforts to establish a basis of settlement of differences between Iraq and Kuwait through negotiations, or the International Court of Justice or any other legal procedures.¹²⁰

Above all, it can be remarked that the ultimatum of six weeks given to Iraq had the effect of inhibiting the ongoing diplomatic negotiations. The UN Secretary General's lengthy conversations with Saddam Hussein on 13 January 1991 gives enough indication that the latter was willing to consider a 'package deal' if more time was given and diplomatic talks allowed to continue to seek a solution through means other than war.¹²¹ However the

118. *Glennon*, 'The Constitution and Chapter VII of the United Nations Charter, in *Agora : The Gulf Crisis in International and Foreign Relations Law*, Vol. 85 AJIL pp-74, 81, 1991.

119. *Eugene V. Rostow*, "Until What ? Enforcement Action or Collective Self-defense," A.J.I.L. Vol 85, 1991, p. 506.

120. *Prof. M.S. Rajan*, n. 63, op. cit. p. 271.

121. *Perez de Cuellar Report*, "Saddam Showed Flexibility," *The Times of India*, 11 February 1991.

U.S., Kuwait and their other allies preferred to seek a military solution.¹²² On the eve of the expiry of the deadline the Secretary General, Perez De Cuellar, declared that his Baghdad trip was a failure. Saddam Hussein had not expressed any willingness to withdraw from Kuwait and that he (de Cuellar) had lost hope for peace in some ways.¹²³

With the deadline for Iraq's withdrawal from Kuwait only hours away, the Security Council members gathered to work out a final peace plan for the Gulf Crisis. A six-point French Peace Plan which included Iraqi withdrawal, non-aggression guarantees for Iraq, West Asian peace conference, UN verification of Iraqi withdrawal etc, was put forward in the Security Council, but it was rejected by both the US and Iraq. The French plan was also reflected by UK and USSR while it was favoured by China, India, Austria, Cuba, Yemen, Zaire, and Zimbabwe.¹²⁴

At midnight, on January 15, the deadline for Iraq to withdraw from Kuwait under the famous Resolution 678 expired.¹²⁵ The Operation Desert Storm launched by the US and its allies on 16 January 1991 was based on the UN Security Council Resolution 678.¹²⁶ These attacks inaugurated the first phase of Desert Storm, an air campaign directed against Iraqi command and control, Iraqi chemicals and biological warfare production plants and Iraqi ground forces in the Kuwaiti theatre of operations. The air forces of the United States, Britain, France, Canada, Italy, Saudi Arabia, Qatar, and Kuwait participated in this phase of the war, which involved strikes from land, air, and sea-launched missiles, jets, and helicopters.¹²⁷

122. Kulwant Kaur, n. 7, op. cit. p-67.

123. Gazi Ibdeewi Abdulghafour, n. 2, op. cit. p-65.

124. *Ibid*, p-65. See also Richard A. Schwartz, n. 54, op. cit. p-193.

125. Gazi Ibdeewi Abdulghafour, n. 2, op. cit. p-65.

126. Kulwant Kaur, n. 7, op. cit. p-67.

127. Richard A. Schwartz, n. 54, op. cit, p-193.

On 18 January, Iraq launched its first Scud missile attack against Israel. In response American jets attacked the missile launching sites.¹²⁸ On 20 January-Iraqi Scuds hit Dahrán and Riyadh. Saddam's determination still seemed to be firm. In a nation-wide television address, he said that most of Iraq's forces are being held back for the "final battle."¹²⁹

As the war progressed one thing became very evident : Bush's war aims kept on expanding. There was now a major escalation of U.S. war aims. It became soon apparent that these aims were much broader than merely enforcing the UN resolutions. Bush had previously stated that the aim of the war was to liberate Kuwait and to make Iraq withdraw unconditionally. But just after the first attack Bush announced that US was "determined" to knock out Iraqi chemical, biological, nuclear installations, its artillery viz. its whole military arsenal. Thus, the US aim now was the destruction of Iraq. This meant that the war would continue even after Iraq withdrew from Kuwait.¹³⁰

Ironically, the news of the attack on Iraq came at time when non-aligned members of the Security Council were discussing the possibility of a new peace initiative to solve the crisis.¹³¹ They claimed that they were pressurised to accept certain resolutions, especially with regard to the January 15 deadline. In addition, Columbia, Cuba, Malaysia and Yemen were upset by the U.S action in which US blocked the passage of their resolution on the occupation of Arab territories by Israel.¹³²

128. *Ibid*, p-194.

129. Gazi Idewi Abdulghafour, *op. cit.* p-67.

130. *Ibid*, p-68.

131. *Ibid*, p. 66.

132. Prof. R.B. Singh, n. 96, *op. cit.* p-123.

When Saddam Hussein retaliated by launching ground-to-ground Scud missile attacks against Saudi Arabia and Israel, the latter, on 28 January, reported to the UN that "destructive and unprovoked "missile attacks by Iraq had caused civilian deaths and damage to homes and property. The Secretary General condemned the attacks on Israel and expressed regret that they were spreading the conflict. During the war Iraq sent a series of reports to the UN accusing the US of bombing a factory producing infant food and civilian targets and shelters. But as the war continued it was clear that the UN had no control over it, nor over the military operation. DeCuellar said War in the Gulf was not a UN war and that the world body has no control over it.¹³³

As the war progressed, the Security Council held almost continual informal consultations. Yemen and Cuba and Many other states requested an urgent formal sessions of the Council. But the US and some members opposed such a move. On 13 February, the Council decided to discuss the matter in a formal but private meeting. Verbatim records of the sessions were to be made public. There was disagreement over this and it was put to vote. Nine of the 15 Security Council members voted to keep the public out of the session in line with a proposal from Britain. Yemen and Cuba voted against. China, Ecuador, India and Zimbabwe abstained from voting. The Soviet Union as well as the US and France supported the move. This was the first time in the Council's 45 year history that members had to vote to decide on such an important issue. The Council had met in private only on four occasions in the past over the Suez-Crisis in 1956, on West Asia in 1973, on Cyprus in 1974, and Western Sahara in 1975.¹³⁴

Saddam Hussein appears to have been convinced that the

133. U.N. DOC. S/22160. of 28 January 1991.

134. Gazi Ibewi Abdulghafour, n. 2, op. cit. p. 69.

coalition forces, led by General Normon Schwarzkopf, (supreme commander of the coalition forces in the Gulf) were not prepared to face up to his ground forces. On February 15th Iraq announced that it was prepared to withdraw from Kuwait, complying with UN Resolution 660, but it attached a long list of unacceptable conditions to its offer. These were (1) a complete ceasefire ; (2) annulment of all other UN resolutions regarding the conflict ; (3) a complete withdrawal of all coalition forces from the region within a month of the ceasefire ; (4) a withdrawal of Israel from "Palestine and the Arab territories it is occupying in the Golan and Southern Lebanon "or that in the event that it did not do so that the UN should pass against Israel identical resolutions to those passed against Iraq : (5) a guarantee of Iraq's historical rights" on land and sea ; and (6) that the "political arrangements to be agreed" should be based upon the "people's will and in accordance with democratic practice." Whatever else one wished to call this offer, it was certainly not unconditional. President Bush's description of it as a "cruel hoax" was some what nearer the mark.¹³⁵ John Major, the British Prime Minister, echoing President Bush, described the Iraqi offer as a bogus sham. This offer by Iraq was rejected outright by the US-UK combine.¹³⁶

On 14 February, China presented a five point proposal for peace which included Iraqi withdrawal, working for peaceful solution, prevention of escalation and expansion of war, setting date for West Asian Peace Conference and post war arrangements to be made by regional parties without foreign involvement. But since the US cold shouldered it this peace proposal too fell through. Then followed a flurry of diplomatic activities. The Iranian President Hashemi Rafsanjani and the Indian ex-Prime Minister,

135. *Peter Vine and Paula Casey*, n. 56, op. cit., p-155.

136. *Gazi Ibdewi Abdulghafour*, n. 2, op. cit., p-71.

Late. Mr. Rajiv Gandhi, flew down to Moscow to deliberate on peace moves. On 18 February, the Iraqi foreign minister, Tariq Aziz met Gorbachev in Moscow and discussed a specific Soviet peace proposals. On 22 February, this plan was brought to the notice of the UN Secretary General and heads of state of the US, UK, France and China. This Soviet peace plan had 8 points-Iraqi withdrawal from Kuwait, it was to begin on the day hostilities ceased, withdrawal of all forces within a time frame, economic sanctions imposed by the UN to be lifted after 2/3rd Iraqi forces withdraw, all UN resolutions to be invalidated once Iraq withdraws, Prisoners of War's (POW's) to be released after ceasefire, withdrawal of forces to be monitored by countries not involved in the conflict under the UN Security Council's auspices, and more details to be worked out.¹³⁷

Despite efforts by the Soviet Union to salvage something out of the situation, it was becoming clear that Saddam Hussein was prepared to force his troops into a bloody battle. Finally, on February 22nd President Bush issued his ultimatum: (1) begin withdrawing from Kuwait by noon on February 23rd New York Time (8.00 p.m. local time) and complete that withdrawal in seven days ; (2) within the first 48 hours remove all its forces from Kuwait city and allow the prompt return of the legitimate government, and withdraw from all prepared defences along the Saudi-Kuwait and Saudi-Iraq borders and from Kuwait's portion of the Rumallah airfield; (3) release of all prisoners of war and civilian detainees within 48 hours; (4) remove all explosive and booby trap devices from Kuwait; and (5) cease combat air fire and aircraft flights over Iraq and Kuwait except for aircraft carrying troops out of Kuwait. President Bush promised that if these terms were met the coalition would not attack retreating Iraqi forces. It

137. *Ibid*, p-71.

was already clear however that Iraq had no intention of agreeing to such terms.¹³⁸

On the contrary the Iraqi army was busy setting fire to hundreds of Kuwaiti oil wells and other installations. The promised "scorched earth" policy was being carried out. Unfortunately the talks between Tariq Aziz and the Soviet government were seen as a cause to delay the ground offensive. The final phase of the coalition forces joint action to free Kuwait began at four o'clock in the morning of February 24th. It was a brilliantly planned offensive in which land armies broke through Iraqi defences along a 480-kilometre front. For the most part Iraqi soldiers surrendered, but there were several instances of determined resistance.¹³⁹

But the same day witnessed the beginning of the ground war and the Security Council held consultations on 25th, 26th and 27th February. The Council wanted a clear, formal, written acceptance of all resolutions before the Council would move forward.¹⁴⁰

By a communication dated 27 February 1991 (when Kuwait had been liberated by the coalition forces) Iraq informed the Council that all Iraqi forces had been withdrawn from Kuwait, although the US-led forces continued to attack the withdrawing forces on Iraqi soil (contrary to previous assurances). Iraq reaffirmed its agreement (S/22273) to comply fully with resolution 666, 662 and 674, provided, however, that the Council adopted a resolution calling for an immediate cease-fire and lifting of sanctions (under resolution 661, 665 & 670). The Council ignored the condition stipulated by Iraq. By another communication of 28 February, Iraq informed the Council (S/22275 and S/22276) of

138. *Peter Vine and Paula Casey*, n. 56, op. cit. p-155.

139. *Ibid*, p-155.

140. *Gazi Ibdeawi Adulghafour*, n. 2, op. cit. p-71.

its agreement to comply fully with 660 and all other resolutions too.¹⁴¹

The Security Council met again on March 2 1991, to review various developments : the liberation of Kuwait, the suspension of hostilities and Iraq's agreement to comply with all the resolutions of the Council. The Council considered a draft resolution (S/22274) sponsored by the United States and others. The Council thereupon voted on the draft resolution (as 686 (1991))¹⁴² setting the terms for the ceasefire, was passed by eleven votes to one with three abstention in the Security Council. Cuba voted against the resolution while China, Yemen and India chose to abstain.¹⁴³ The resolution neither declared a formal ceasefire nor did it order multi-national troops out of Iraq or lift sanctions against Baghdad, though Kuwait was liberated. The resolution failed to provide even a time-table for the withdrawal of foreign troops from Iraq. This was, in spite of the assurance given by the US Commander, General H. Normon Schwarzkopf that allied forces would leave Iraq once the ceasefire terms were signed and Kuwait liberated. This clearly indicates that the war aims of the US-Allied Operation Desert Storm were beyond the declared objectives i.e. the liberation of Kuwait, restoration of legitimate government in Kuwait and curbing territorial ambitions of Iraqi President. In fact, for the U.S. the issue is not simply the restoration of Kuwaiti sovereignty, but the destruction of Iraq's military power and control over oil.¹⁴⁴

On 3rd March, in two letters (S/22320 and S/22321) to the Security Council President and the Secretary General, Iraq agreed to fulfill its obligations under Resolution 686. Iraq started releasing

141. *Prof. M.S. Rajan*, n. 63, op. cit. p-319.

142. *Ibid*, p-319.

143. *The Times of India*, 4 March 1991.

144. *Mainstream*, Vol. XXIX, No. 17. 16 February 1991, p. 27.

the POWs by 4 March. On 22nd March, the Sanctions Committee decided to lift the embargo on civilian and humanitarian imports to Iraq. On 24, March, the UN, lifted the ban on supply of food and fuel to Iraq.¹⁴⁵

The U.N. Security Council adopted Ceasefire Resolution 687 of 3 April 1991, which would formally end the Gulf War. It was a carefully drafted 36 paragraph document. This nine-part draft resolution S/22430 (sponsored by the US and its allies) set out specific conditions by which international peace and security would be restored in the region. It was sponsored by Belgium, France, Romania, United Kingdom, United States and Zaire. The vote was 12 to 1 (Cuba voting against) with 2 abstentions (Ecuador and Yemen). It asked, inter alia, Iraq and Kuwait to respect the inviolability of the 1963 Iraq-Kuwait boundary ; guaranteed the inviolability of that border ; established a demilitarized zone and requested a UN unit to monitor it ; decided that Iraq would unconditionally accept the destruction, removal or rendering harmless of all chemical, biological weapons and all ballistic missiles of 150 km. range; demanded that Iraq submit location, number and types of such weapons ; decided to appoint a commission to inspect the sites of all chemical, biological and missile capabilities and supervise their destruction; asked International Atomic Energy Agency (IAEA) to inspect Iraq's nuclear capabilities and submit a plan for their destruction; reaffirmed Iraq's liability under international law for any direct loss, damage or injury to foreign governments, nationals and corporations, as a result of its occupation of Kuwait; and called upon Iraq to inform the Security Council that it would not commit or support any act of international terrorism. Howsoever humiliating or oppressive it might have been Iraq had no choice

145. *Gazi Ibdeawi Adulghafour*, n. 2, op. cit. p.73

but to accept it, which it did on 6 April 1991. This resolution was described by Soviet Ambassador, Yuli Varnolsov, as the mother of all resolutions because it set out in great detail, the conditions for a permanent ceasefire.¹⁴⁶ On 11 April, the President of the Security Council, on behalf of its members, formally accepted Iraq's notification. He noted that the conditions established in the resolution had been met and that the formal ceasefire was in effect.¹⁴⁷

In paragraph 5 of the Resolution 687 (1991) the Council established, among other things, a demilitarized zone (DMZ) along the boundary between Iraq and Kuwait, to be monitored by a United Nations observer unit, and requested the Secretary-General to submit to the Council for approval a plan for the unit's immediate deployment. The Secretary General reported back on 5 April 1991, and on 9 April, by its resolution 689 (1991), the Security Council, acting under Chapter VII of the United Nations Charter, approved his plan for the setting up of the United Nations Iraq-Kuwait Observation Mission (UNIKOM). It decided further that the modalities for the mission should be reviewed every six months, but without requiring in each case a formal decision for its extension. The Council's formal decision would be required only for UNIKOM's termination, thus ensuring the indefinite duration of the Mission, its termination being subject to the concurrence of all the permanent members of the Council.

By acting under Chapter VII, the Council demonstrated that the international community would act decisively should Iraq attempt to attack Kuwait again. To further underline this, all five

146. See the text of Security Council Resolution 687 on a permanent cease-fire between Kuwait and Iraq (5/4/1991).

147. *The Blue Helmets : A Review of United Nations Peace-Keeping*", Published by the United Nations, Deptt of Public Information, New York, 1996, p-682.

permanent members of the Security Council, for the first time in a peace-keeping operation, agreed to provide military observers.¹⁴⁸

In accordance with the established principles for the UN peace keeping operations, the UNIKOM has to function under the command of UN, vested in the Secretary General and under authority of the Security Council. The Chief Military Observer is responsible to the Secretary General who, in turn, will report regularly to the Security Council on the operations of the UNIKOM and the situation in the area. The purpose of UNIKOM is to monitor the Khor Abdullah waterway between Iraq and Kuwait and a demilitarized zone extending 10 kilometers into Iraq and 5 kilometres into Kuwait, based on borders establishment between Kuwait and Iraq under the 1963 agreement, to deter violation of the boundary through its presence in and surveillance of the demilitarized zone, and to observe any hostile or potentially hostile action mounted from the territory of one state into other. The UNIKOM comprises armed and unarmed military personnel. It is composed of a group of 300 military observers and an infantry contingent of approximately 600 soldiers and officers. In addition, the mission has an air unit with fixed-wing aircraft and light helicopters, a transport, and headquarters unit. The UNIKOM seeks to ensure that no military personnel and equipment are stationed within the demilitarized zone and that no military fortifications and installation are maintained in it. To this end, the mission was entrusted with the task of monitoring the withdrawal of the armed forces from the zone.¹⁴⁹

To enable the UNIKOM to effectively carry out its mandate, the government of Iraq and Kuwait were requested to extend to the mission full freedom of movement, on land and through the

148. *Ibid*, p-682.

149. Gazi Ibdewi Abdulghafour ; n. 2, op. cit., pp. 81-82.

air, across the border and throughout the demilitarized zone. As an observation mission, the UNIKOM is not authorized to take physical action to prevent the entry of military personnel or equipment into the demilitarized zone. The mission can use force only in self-defence. The mission will not interfere in the normal civilian life of the area. The governments of Iraq and Kuwait were free to carry out all aspects of civilian administration in their respective parts of the demilitarized zone, including the maintenance of law and order.¹⁵⁰

So far UNIKOM seems to be working well despite or because of its peculiarities. Both parties to the conflict are cooperating with it.¹⁵¹

After the end of war and hostilities, the Security Council passed some resolutions to maintain or reinforce the sanctions, by periodically reviewing the developing situation and by pulling up Iraq for its (alleged) non compliance or inadequate compliance. The Important resolutions are as fallows :

In resolution 688 (5 April 1991) the Security Council expressed grave concern at the repression of the Iraqi civilian population by the state and condemned this repression. It demanded that Iraq should end this and that Iraq should allow international humanitarian organizations to help. The resolution asked the Secretary General to look into the matter.

Resolution 689 (9 April 1991) adopted unanimously for the purpose of monitoring a demilitarized zone established by the Council.

150. *Ibid*, p. 82. For the details about UNIKOM and its activities; See *The Blue Helmets* ; n. 147, op. cit. pp-79-88.

151. Wolfgang F. Danspeckgruber and Charles, R.H. Tripp, "The Iraqi aggression against Kuwait : Strategic lessons and implications for Europe," Westview Press, Colorado, 1996, p-226.

Resolution 692 (20 May 1991), provides the creation of the compensation Fund and Compensation Commission.

Resolution 699 (17 June 1991) asked the destruction of weapons of mass destruction.

Resolution 705 (15 August 1991), which set the upper limit of the compensation to be paid by Iraq to 30 per cent of its annual export.

Resolution 706 (15 August 1991), which allowed for limited sale of oil in order to meet essential civilian needs.

Resolution 707 (15 August 1991), condemning Iraq's serious violation of its disarmament obligations.

Resolution 712 (19 September 1991), set out the legal basis for the oil sale and stipulated that the oil and the oil products sold under the current authorization were immune from any other legal actions or punishment and asked states to take the steps necessary to ensure that the profits were not delivered. It also set up the escrow account to be administered by Secretary General gave diplomatic immunity to the inspectors and other exports needed to carry out the plan, and demanded that Iraq should allow the UN personnel full freedom of movement and all necessary facilities. The Council also instructed the escrow funds to be made immediately available to buy food, medicine, and other humanitarian needs.

Resolution 715 (11 October 1991) 'Condemned' Iraq for its alleged non-compliance of the obligations (under resolution, 687) and demanded fulfillment of these obligations.¹⁵²

In a meeting on 3 October 1991, the Security Council decided against lifting of sanctions against Iraq. Thus, the sanctions

152. See The U.N.S.C. Resolutions 688, 689, 692, 699, 705, 706, 707, 712 and 715, of above mentioned date.

imposed in August 1990 have not yet been lifted. These sanctions are crushing the Iraqis. They do not have adequate medicines, food etc. The economic blockade is still on. Sanctions have very little chance of being lifted till Iraq complies completely with terms of Resolution 687 of 3 April 1991.¹⁵³

Moreover, the Gulf War was not in conformity with laws of war, the rules of the law of Nations respecting warfare. In the field of international law one of the most significant developments in the 20th century has been the legal regulation of states to resort to war, to use force, to engage in non-war hostilities and the development of the concept of collective security. While examining the laws of war in the Gulf War one has to take into consideration the following principles which form the basis of the laws of war.

The first principle is that the conduct of a belligerent is subject to, and must be within the limits, of international laws, and 'military necessity' in war does not overrule the obligations and prohibitions imposed by the law of warfare. The fundamental principle is that the procedure of war is a means to an end : and the means applied must have relation to the submission of the enemy. In no case should the measures applied exceed the necessity of the situation. The second principle is that there has been a more rapid technological progress and invention of war weapons than development and codification of the law of war. But as stated in the Fourth Hague Convention of 1907 'until a complete code of the law of war is issued, the inhabitants and the belligerents remain under the protection of the law of nations as it has emerged from the laws of humanity and dictates of public conscience. Geneva Convention of 1949 also lay down the similar principle. The third principle is the principle of humanity as a consequence of which the belligerents are forbidden to employ

153. *Gazi Ibdeewi Adulghafour*, n. 2, op. cit. p. 85

arms, projectiles or material calculated to cause unnecessary suffering. In other words, the belligerents are not allowed to use weapons of war to outweigh the military objective. Article 22 of the Hague Regulation of the IVth Convention provides that the right of the belligerents to adopt means of injuring the enemy is not limited, the belligerents are also required to protect the victims of war, *i.e.*, the wounded, the sick and the shipwrecked members of the armed forces and the civilians. The fourth principle is that there is a clear distinction between the defended and undefended positions or military and non-military objectives. The civilian population of the enemy is free from attack, unless they engage themselves in hostile aids. Neutral States, vessels and persons are immune from interference other than provided by the law of neutrality. The fifth principle is the status of the prisoners of war. In case of declared war, the Geneva Convention of 1949 prohibits 'at any time and in any place whatsoever the following acts with regard to these persons:

- (a) violence to life and person in particular, murder of all kinds, mutilation, cruel treatment and torture,
- (b) taking of hostages,
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment,
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.'

What happens to those members of the armed force who violate these regulations ? Experts of international law say that they must be punished as 'war criminals; In the Gulf War these

principles were violated to a very great extent.¹⁵⁴ The coalition forces in the Gulf War expressed no doubt as to the applicability of the rules of armed conflict to their operations. They did charge from time to time that Iraqi actions violated those rules. The Security Council also accused Iraq of grave breaches of the fourth Geneva Convention on protection of civilian persons and property and the Council affirmed the liability of Iraq and of individuals who committed or ordered such grave breaches.¹⁵⁵ The bombing of Iraq clearly violated all humanitarian laws and Protocol I of the Geneva Conventions of 12 August 1949, relating to the protection of victims of International Armed Conflicts which prohibits "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."¹⁵⁶ The military leaders of the coalition responded that only sites of military significance were targeted, but they acknowledged that heavy "collateral damage" affecting civilians had occurred. More important was the strategic bombing aimed at the infrastructure that supports military capacity such as power plants, bridges, roads, communications. Such bombing predictably devastated civilian life.¹⁵⁷ In the Gulf War, commanders of the coalition forces maintained that they took every reasonable precaution to minimize civilian casualties, but they did not conclude that aerial bombing of legitimate military objectives was prohibited because civilian casualties would result. A relevant provision of Protocol I (Article 57) requires that a commander should do everything "feasible" to minimize civilian

154. *Prof. R.B. Singh*, n. 96, op. cit. pp-125-127.

155. *T. Meron*, "Prisoners of War, Civilians and Diplomats in the Gulf Crisis," Vol. 85, *AJIL*, 1991, p-104.

156. *R.P. Anand*; n. 29, op. cit. p-48.

157. UN Doc. S/22366 (March. 20, 1991) (Report of Secretary General's mission to assess humanitarian needs).

casualties. What is "feasible" is not defined and it is far from clear that it provides much direction to the commanders in a war situation.¹⁵⁸

Another issue which became a cause of grave concern was the status of prisoners of war, *i.e.*, soldiers who were captured by either of the belligerents during the war. The Hague Regulations had made elaborate provisions for the improvement of the conditions and treatment of the prisoners of war. It recognises two general principles, that the prisoners of war were in the power of the hostile government and not of the corps that captured them ; and that they must be humanely treated. In the Gulf War there was a clear violation of the rules and regulations by Iraq when it used captured American soldiers as a shield. Generally there is a provision to extract from the prisoner information of military value. Article 17 of the Hague Convention of 1929 lays down in detail the information which a prisoner may be required to give. This is restricted to his surname, first names and rank, date of birth and army, regimental, personal or serial marker.¹⁵⁹

The United Nations had played an unprecedented crucial role throughout the Gulf Crisis. The Gulf Crisis and War exposed the weakness in the United Nations and the hegemony over it. The UN Chapter did not envision that the United Nations would function as a vehicle for a superpower like the United states to make foreign policy decisions nor did it envision for the implementation of those decisions. The major industrialized countries not only bypassed the UN, but also did not prefer to wait for a negotiated UN settlement.¹⁶⁰

158. Oscar Schachter, n. 94, op. cit. p-467.

159. Prof. R.B. Singh, n. 96, op. cit. pp-127-28.

160. Gazi Ibdeewi Afdulghafour, n. 2, op. cit. p-92.

In the Gulf Crisis, the UN became a victim of criticism because it was wholly dominated by the USA. Although the Security Council appeared to speak with one voice after Iraq's annexation of Kuwait but it failed to convince the Third World countries. Some one may call it an authorised use of force by the UN, but it also appears to be action where Security Council itself became captive of it. The credibility of UN action to repel aggression and restore international peace and security, as foreseen in the UN Charter, was profoundly affected by the response to the Iraqi invasion in Kuwait. The Security Council under the pressure of USA, showed its indecisiveness to take proper action. One can agree with Prof. H.G. Nicholas that UN rests in law but lives by politics; UN action has often been determined by external political perspectives and equations, primarily those involving the USA or the USSR/Russia.¹⁶¹

India's tendency to regard the Gulf crisis as "just another" regional conflict and the consequent a need to keep extra-regional powers at bay apparently shaped its response. New Delhi piqued over the speed with which the United States responded to the situation. During the first two months of the crisis, India repeatedly called for the "soonest possible withdrawal of Iraqi forces from Kuwait" and expressed its opposition to any "unilateral action outside the framework of the UN.," a clear reference to the military buildup by the United States and Britain.¹⁶² In his address to the UN. General Assembly on September 28, 1990, Foreign Minister I.K. Gujral decried the "foreign military presence" in the region and said that "it would be everyone's advantage if

161. *Prof. R.B. Singh*, n. 96, op. cit. pp-123-24.

162. *J. Mohan Malik*, "India's Response to the Gulf Crisis," in *Asian Survey*, Vol. XXI, No. 9. University of Carolina Press, Sept 1991, pp-849-50.

these are deinducted as soon as possible." India supported U.N. Resolution 678.¹⁶³

The ideal of collective security dominated much of the debate during the gulf conflict. The political leaders of the coalition and their representatives in the United Nations proclaimed the necessity of common action against the aggressor in terms reminiscent of statements earlier in the century by Woodrow Wilson, Henry Stimson, Maxim Litvinov, Winston Churchill and Franklin Roosevelt.¹⁶⁴ Understandably, the gulf conflict and the success of collective action under UN authority have led to a new perception. That success showed, for one thing that unanimity of the permanent members is not a will o' the wisp and that a good part of the international community would be prepared to support measures against aggression adopted by the Security Council. It also revealed-though this aspect has not been hithlighted-that governments may legitimately give effect to collective security without obtaining the authorization of the Security Council or of any UN body. This is not new. As we saw, the Charter always included collective self-defence as a legal basis for coercion when a state has been attacked and other states are prepared to aid that state by economic sanctions and armed force.¹⁶⁵

Thus, the experience of the gulf conflict underlined two legal grounds for collective security. It showed that the Council was no longer hopelessly thwarted in meeting aggression by the absence of great power unanimity. The Council could adopt nonforcible sanctions of a binding character and it could authorize military measures. But the gulf episode also indicated that Council action was not required where collective self-defence could provide the

163. *Indian Enpress*, 29 September 1990.

164. Oscar Schachter, n. 94, op. cit. p-470.

165. *Ibid*, p-471.

legal basis for measures against aggression. On that basis, authorization by the Council would not be required as a matter of Charter law. Of course, as mentioned earlier, the Council could use its authority to prohibit or terminate collective self-defence measures. However, as this would require a decision of the Council, it could not be accomplished without the support of the five permanent members and the nine required votes. Once again, the veto would impose itself as crucial. In a case of this kind, the veto could be employed, not to impede the collective action, but to ensure that such measures would not be barred by the Council's decision. To take the example of the gulf conflict : hypothetically, a majority of the Council might have favoured relying solely on the non-military sanctions to compel Iraq to withdraw, whereas at least two of the permanent members might have considered military measures essential. As the majority could not adopt a decision (in view of veto) to terminate or prevent military action under Article 51, a collective self-defence action would have been legal under the Charter.

Since collective self-defence may well be the legal basis for future collective security actions, it becomes important to remind states that the conditions for self defence, collective and individual, are imposed by international law. The states claiming the right to use force in collective self-defence cannot be the final arbiters of its legality.¹⁶⁶

In terms of collective security, the UN could not act in a praise worthy manner. It was the US and not the UN which took over the leadership of the multinational forces. A Number of developing countries were outraged by this development but they found themselves utterly impotent in face of the demonstration of power

166. Oscar Schachter, "Self-Defense and the Rule of Law," in A.J.I.L, Vol. 83, 1989. p-259.

and influence by the US. The coalition troops did not wear the UN force's uniform, they did not fight under the UN flag, and the Military Staff Committee never directed the operations. There was a total abdication of responsibility by the UN. It was rather embarrassing to note as to what extent the UN grew in consequential in the process.

The manner in which collective security was carried out through war, showed that the world could be better if regional organizations maintained security. If the dominant powers were to determine the destiny of states they would do what suited them. To avert this possibility regional organizations should be established with the support of the UN. Regional collective security ought to take precedence in order to save these regions from the manipulations of the large powers. In order not to be manipulated by those who send the forces the UN should have a permanent standing forces or at least a force which can be mobilized instantaneously.¹⁶⁷

Therefore, in future any collective UN action will require : (1) the overwhelming responses of the majority of the nations in favour of sanctions including the threat or actual use of military power ; and (2) an effective military force working exclusively under UN. Today thus, the need is for setting up comprehensive mechanism by the UN within the provisions of the UN Charter to prevent any further territorial aggressions by any country. If could be possible only when the UN is not affected by the dictates of the big powers. Then only one will see the effectiveness of the UN in settling disputes and thereby promoting peace and security which is the main goal of it.¹⁶⁸

167. *Gazi Ibdeawi Abdulghafour*, n. 2, op. cit. p-94.

168. *Prof. R.B. Singh*, n. 96, op. cit. p-125.

CHAPTER VI

**NEW CHALLENGES AND
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Universal or quasi-universal international organizations like the U.N. are expected to be mechanisms for the more elevated conduct of international relations. Any action, if it is taken in the name of the whole, will have considerably more legitimacy and propriety than if it is taken only by one or a number of interested states. U.N. peace-keeping operations were considered one such activity and the expectations were that it will be a non-partisan, impartial kind of activity uninfluenced by considerations of power. These considerations were largely based on the assumption that collective measures whatever their nature are, in some way, a political and free from power politics. Indeed, institution like the U.N. must realistically be seen, so far as their efforts to implement collective security are concerned, as attempts to organize power in such a way as to ensure a durable balance in favour of peace and against aggression. Such efforts have to be a continuing process ; a step or two forward, and at times backward, if necessary, based on an empirical and pragmatic approach as against a legalistic and punitive view of collective security, may lead to consolidation of some gains and a more stable arrangement for peace.¹

Since 1945, the international system has undergone a sea change. By 1992, the old order created at the end of World War II had completely broke down.² The end of cold war has brought about drastic changes : super power framework and bi-polar

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1. K.P. Saksena, "The United Nations and Collective Security," D.K. Publishing House, Delhi, 1974 pp. 274-75.
 2. Satish Kumar ; "Collective Security System Under the UN Charter : Need for Strengthening", in RIS Digest, Vol. 10, No. 4, December 1993, p. 14.

system collapsed ; bloc rivalry and the intense military and political tension evaporated ; Western Europe integrated ; the Soviet Union had disintegrated ; Eastern Europe drifted towards market economy ; military alliance reduced to a few regimes ; and the ideology marginalized. In short, nearly the entire 1945 world has gone with the wind.³

The international system is thus in a state of flux. There is not only an opportunity but a need to build a system which is participatory and democratic, potentially free from conflicts caused by territorial aggressiveness and ideological expansionism and in which problems of economic insecurity and environmental degradation are tackled in a non-discriminatory manner. Such a system cannot be built around one or more states, which are militarily or economically most powerful in the world, because these states would be naturally inclined to pursue their own national-interests. Such a system can only be built around a universal international organization which the United Nations happens to be. The United Nations until recently was considerably incapacitated in the discharge of its functions because of the cold war. The end of cold war and the emergence of 'new consensus' among the permanent members of the Security Council has enabled it to play an effective role in maintaining peace 'since 1990'.⁴

The UN has become the most universal international organization in the world, embracing under its aegis the activities of governments from 191 states, as well as hundreds of national organizations, international governmental organizations (IGOs),

3. S.J.R. Bilgrami, "United Nations : With And Without Cold War," in *Indian Journal of International Law*, Vol. 35, Published by the Indian Society of International Law, New Delhi, 1995, p. 146.

4. Satish Kumar, n. 2, op. cit. p. 15.

and international non-governmental organizations (NGOs). The norms of international law derived from the UN Charter and from other international agreements, treaties, and conventions signed under its auspices play a vital role in regulating the internal life of states and the world society.⁵

Despite the many new functions brought into United Nations peace keeping operations, the United Nations have in recent years, once again, been criticized for not being able to take action or not being able to take the right' action in armed conflicts. However, there often seems to be an exception of the United Nations and peace keeping being able to deal with any situation. Though some of the difficulties in the practice of United Nations peacekeeping have roots back to the birth of United Nations peacekeeping, the new and larger peacekeeping operations with many functions and impacts have not made it easier for the United Nations to succeed.⁶ As Alan James points out, there is a limit to what United Nations peacekeeping operations can achieve : 'In appropriate circumstances peacekeeping can make a valuable contribution to peace—but only if and to the extent to which disputants choose to take advantage of it.'⁷

Since the conclusion of the Gulf War, the UN has launched thirteen new operations—in Angola, El Salvador, Western Sahara, Cambodia, Yugoslavia, Somalia, Mozambique, Georgia, Liberia, Rwanda, Haiti, South Africa and Kosovo. These post-cold war

5. Lev Voronkov, "International Peace and Security : New Challenges to UN", in Dimitris Bourantonis and Jarrod Wiener ; ed ; "The United Nations in the New World Order : The World Organizations at fifty," Macmillan Press Ltd., London, 1995, p. 1.

6. Claus Heje, "United Nations Peacekeeping—An Introduction", in Edward Moxon-Browne ; ed ; 'A Future for Peacekeeping' Macmillan Press Ltd., London, 1998, p. 13.

7. Alan James, "Peacekeeping in International Politics, "Macmillan Press Ltd. London, 1990, p. 1.

efforts to respond to conflicts have required further innovations in traditional peace keeping tasks—a second generation of operations that include military, political, social, humanitarian, and environmental dimensions. There is little doubt that the dramatic demand for and support of UN peacekeeping and peacemaking activities stem from the experiences of the transition period in the mid-1980s, the response to the Gulf Crisis, the speed and thoroughness with which the Soviet Union was dismembered, the withdrawal of super power support for many Third World States, and a set of persistent regional conflicts. Most are responses to problems within states rather than between them, problems arising from weak institutions, secessions, ethnic and tribal clashes, and civil wars.⁸ United Nations peacekeeping faces ever more complex challenges which contemporary conflicts raise. These challenges may be listed as :

- ⇒ the framework of peacekeeping operations ;
- ⇒ the limits to peacekeeping ;
- ⇒ the ripeness for intervention ;
- ⇒ juxtaposing military and civilian operations ;
- ⇒ organization and management of peacekeeping operations ;
- ⇒ impacts on the contributing countries ;
- ⇒ the impact on the recipients of peacekeeping ;
- ⇒ preparation of the peacekeepers.⁹

The framework of peacekeeping operations :

Peacekeeping operations are mandated by the Security

8. Karen A. Mingst and Margaret P. Karns, "The United Nations in the Post-Cold War era", Westview Press, USA, 1995, pp. 89-90.

9. Mats R. Berdal, "Whither UN peacekeeping ? Adelphi Papers 281, International Institute for Strategic Studies, HSS/Brassey's, London, 1993. See also Claus Heje, n. 6, op. cit. p. 13.

Council. The process whereby the mandate is drawn up varies enormously and often involves a good deal of politics. Mandating countries many have differing motives (national interest, security or humanitarian assistance), may think along different time frames, or may consider different problems with different degrees of urgency. A further problem arises when the mandate is modified during the conflict. For instance, by 1993, 'In the former Yugoslavia, 42 resolutions and no less than 15 mandate enhancements have been adopted since the Vance Plan was approved by Security Council Resolution 743 on 21 February 1992. This results in the complication of the mandate and the confusion of the mission objectives. Crucially, it diminishes the chances of peacekeepers successfully completing their task.¹⁰ Importantly, despite the efforts of formulating a clear concept of peacekeeping, it appears that the United Nations still lacks a clearly formulated policy for conflict management.

The limits to peacekeeping:

Different problems demand different responses, with some arguing for a greater enforcement element in the United Nations peacekeeping operations (often with reference to Chapter VII in the United Nations Charter), and others calling for an increased emphasis on humanitarian assistance. Recent peacekeeping operations, such as United Nations Operation in Somalia (UNOSOM) and United Nations Protection Force (UNPROFOR, former Yugoslavia), have involved a certain degree of experimentation with the use of force and the degree of consent. There is, however, a limit to how far peacekeeping can be moved away from its basic ideas of consent impartiality and non-use of force and still be called peacekeeping. For the purpose of conflict resolution, experimentation with the use of force and the degree

10. Ibid, p. 31.

of consent seem less fruitful than operations where new functions in terms of, for instance, human rights monitoring and election assistance have been implemented. Therefore, the basic distinction between peacekeeping and enforcement action must be upheld. Increasingly the distinction has been blurred, both in practice and theory."¹¹

The ripeness for intervention:

The enhanced role of the United Nations means that states are inclined to call for United Nations intervention as a first recourse ; that is, before a ceasefire agreement has been reached. This is hardly surprising, as 'De-escalating efforts are especially likely when a conflict has rapidly escalated and violence has broken out.'¹² But peacekeeping per se may not always be the most effective form of third-party intervention, and a conflict may not always be 'ripe' for peacekeeping. Indeed, 'One major problem occurs in the timing of referral of conflicts to the United Nations for consideration.'¹³ However, 'It is not enough to send a force into the field with a vague notion that they should be impartial and help facilitate settlement.'¹⁴ Instead, consideration should be given to the precise role of any peacekeeping operation, and the 'ripeness' for intervention. Peacekeeping as an effort to de-escalate a conflict is related to the presence of some favourable conditions for such de-escalation, the real challenge is not to wait for these conditions to appear but to create these conditions. Therefore, it

11. Ibid ; p. 76.

12. Jeffrey Z. Rubin, 'The timing of ripeness and the ripeness of timing', in Louis Kriesberg and Stuart J. Thorson (eds), 'Timing the De-Escalation of International Conflict,' Syracuse University Press, New York, 1991, p. 245.

13. A. Betts Fetherston, "Toward a theory of United Nations peacekeeping,' Peace Research Report No. 31, Department of Peace Studies, University of Bradford, 1993, p. 33.

14. Ibid, p. 40.

is imperative to understand that peacekeeping, is not enough to resolve a conflict, but peacekeeping is closely related to other efforts which will suit different stages in a conflict.¹⁵

Juxtaposing military and civilian operations :

In traditional peacekeeping, 'infantry battalions have been the basic operational unit in all peacekeeping forces with the exception of small-scale observer missions,¹⁶ and civilians have been used 'sparingly.'¹⁷ In the past, civilian aspects of peacekeeping have often been ignored. New, larger peacekeeping operations have resulted in many new tasks, which often are qualitatively different from task traditionally carried out by the military. Civilian personnel have therefore come to play a more significant role in many peacekeeping operations. This development is clearly Justifiable if a peacekeeping operation is to have a role in a larger framework aimed at resolving a conflict. It is important that the larger role assigned to civilian personnel is not merely seen as an extension of military operations. However juxtaposing military and civilian operations, although interrelated and mutually supportive, results in major command, control and co-ordination problems.¹⁸

Organization and management of peacekeeping operations :

Many academics and practitioners have pointed out the problems in the organization and management of United Nations peacekeeping operations. Mats Berdal summarizes many of these problems in the following list :

"The insufficient attention given to the formulation of clear

15. Claus Heje, n. 6, op. cit. p. 15.

16. Mats. R. Berdal, n. 9 op. cit. p. 7.

17. Robin Hay, 'Civilian aspects of United Nations peacekeeping,' Background Paper 38, Canadian Institute for International Peace and Security, Ottawa, 1991, p. 2.

18. Mats. R. Berdal, n. 9, op. cit. p. 11.

and achievable mandates..... The limited logistical capabilities available..... The failure to establish time-sensitive and secure communications between the UN head-quarters and the field mission..... The failure to establish an efficient command-and-control system in the field..... The inadequate training of units from other than the traditional troop-contributing countries..... The paucity of UN joint doctrine..... the lack of tactical mobility of operation and insufficient attention to the requirements of force protection..... The insufficient delegation of financial and administrative authority..... A general lack of air assets to carry out transport..... The failure to exploit fully advances in technology.....¹⁹ Among the most pressing problems in the lack of financial resources. This has been compounded by the increasing demand for larger and more complex peacekeeping operations. Organizational problems also stem from recent United Nations operations which have been carried out in conjunction with other regional and international organizations."²⁰

Impacts on the contributing countries :

While United Nations peacekeeping is dependent on the willingness of the member-states to pay and the willingness to train personnel for peacekeeping operations, the countries contributing with troops to peacekeeping operations may also make financial gains from the deployment. However, the impact of contributing to United Nations peacekeeping has other aspects, both in relation to foreign and domestic politics and the interests of military establishments. Countries can view the participation in United Nations peacekeeping as an opportunity to further their own foreign policy. This is not only the case among the greater powers ; also the Smaller States of the world may have foreign

19. Ibid, pp. 49-50.

20. Claus Heje, n. 6, op. cit. p. 16.

policy interests in participating in United Nations peacekeeping. There is also the possibility of the military establishment of a particular country having a vested interest in a peacekeeping operation.²¹

The impact on the recipients of peacekeeping :

Peacekeeping is not an exact science, and it is extremely difficult to force the impact of a peacekeeping operation on a particular conflict, society or locality. According to A. Betts Fetherston, 'we do not have enough information to begin to understand the effect of UN interventions-peacekeeping especially-on a conflict situation.'²² Inevitably peacekeeping operations, especially those with more farreaching objectives, for instance United Nations Transition Assistance Group (UNTAG, Namibia and Angola) and United Nations Transition Authority in Cambodia (UNTAC), will have an impact on the recipient country both during and after the operation. Peacekeeping operations, and especially peacekeeping forces, can have unfortunate effects on the local population of the host country.²³

Preparation of the peacekeepers :

According to Maj. Gen. Lewis Mackenzie, former UNPROFOR commander : "As surprising as it may seem and, dare I say it, shocking for some academics, the last thing that a peacekeeper wants to know is the history of the region he is going into. It complicates the task of mediation, and obscures the immediate task, which may well be to deliver food or medicine."²⁴ Nevertheless, training does seem vital to the overall performance of a

21. Ibid, p. 17.

22. A. Betts Fetherston ; n. 13, op. cit, p. 73.

23. Claus Heje ; n. 6, op. cit. p. 18.

24. Lewis Mackenzie, "Military reality of UN Peacekeeping Operations," in Rusi Journal, February 1993, p. 21.

peacekeeping force. Peacekeepers themselves frequently call for greater attention to be paid to training and civilian peacekeepers rarely receive any preparation at all.

Dramatic shifts and changes in international system in the last few years unfolded violent escalation of local tribal, regional and ethnic conflicts at an unprecedented rate which have brought unspeakable human sufferings and tragedies and renewed the old debate about the UN role and its effectiveness as a world body to reduce tensions and provide diplomatic support in resolving violent crises. Demand for more active role and under participation of the UN either in resolving regional conflicts or attending social, economic and cultural issues, are a long cry for the developing countries. Although from a different consideration, the former Soviet Union and other communist countries also demanded for more power and authority to the world body for resolving regional conflicts.²⁵

With the changing international situation more and more nations are asking for UN peacekeeping troops, and at the same time peacekeeping job once considered to be easy, peaceful, honourable and without risk, has become more difficult, risky and costly. Over the period, the UN has become more ambitious over its earlier successes and undertaken more and more risky and costly mission which involved not only peacekeeping but peacemaking (Compuchea), peacebuilding (Somalia) and peace enforcement (Bosnia) for which the UN was apparently rather capable for not equipped with. Keeping in view of above facts some of the problems and challenges for the UN peacekeeping in the post-Cold War era are numerated as follows :²⁶

25. Golam Mostafa, "The UN Peacekeeping Operations : Challenges and Options", in Journal of International Relations, Vol. 1, No. 2, January-June 1994, Published by Department of International relations, University of Dhaka, p. 54.

26. Ibid, p. 55.

High expectations :

The end of the Cold War and collapse of the former Soviet Union raise new hopes and expectations about the UN that in the absence of old rivalries the world body can genuinely fulfil its collective security mission stipulated in the Charter. The Gulf War and gained victory over Iraq created false impression about the power and ability of the UN.²⁷

Overambitious UN :

As regional conflicts proliferated and demands for peacekeeping increased dramatically, the UN became more and more ambitious about its activities, roles and capabilities in maintaining international peace and security. As mentioned earlier, the Gulf War was fought by the US but the UN took undue credit for the "victory". The bureaucrats in the UN, including its dynamic Secretary General, demand for more and more power for the UN, while powerful member-states are disinterested in creating a supranational body and prefer to conduct their international policies based on their national interests. Even the weak and small states are not in favour of an all powerful UN and are afraid of an interventionist policy by the UN in their domestic affairs.²⁸

Lack of interest and commitment on the part of the US in peacekeeping :

The collapse of the former Soviet Union ended the bipolarity and upset the balance of power. The old order collapsed but the unipolar world headed by the US failed to resolve emerging conflicts and to maintain order and stability at international level. In the post-cold war era the super and great powers are mainly

27. Ibid, p. 55.

28. Boutros Boutros-Ghali, "An Agenda for Peace" United Nations, New York, 1992, pp. 89-102.

pursuing inward looking policies and have lost interests and urgency in resolving regional conflicts. With the industrialised countries still in economic recession, domestic preoccupation of the US Administration and its clear reluctance to play any leading role in world politics divisions in Europe and economic crisis and politics uncertainly in Russia, it is unrealistic to expect that the great powers will have renewed commitments in global politics at least in near future.²⁹

Proliferation of conflicts :

In the absence of any order and stability old conflicts based on territorial, ethnic, tribal, linguistic, cultural and religious issues have resurfaced and new disputes are in the rise in brutal and savage forms. During 1948-78, the UN undertook only 13 peacekeeping operations and almost all of them did not require any use of force. During 1988-92 the UN became involved in 14 new peacekeeping operations. Currently the UN is involved in 22 operations, and the number of peacekeepers involved have increased seven times in the last six years as UN peacekeepers.³⁰

Changing nature of conflicts :

The nature and characteristics of local conflicts have changed qualitatively. In earlier period, most of the conflicts, at least where the U.N. peacekeeping was involved, were inter-state in nature and the peacekeepers were sent only when the parties need to fulfil their commitments and assured the safety and security of UN troops. Now the peacekeepers have to deal with multiple authorities, including many non-state actors who are non-structured with no clear cut chain of command and control, and the peacekeepers often do not know whom to deal with and how. For example, in the case of Rwanda the UN peacekeepers

29. Golam Mostafa, n. 25, op. cit. p. 56.

30. The Globe and Mail, May 2, 1994.

were sent to patrol a demilitarized zone that had been agreed by Tutsis and Hutus, but when the agreement was thrown out into the air and the both sides engaged in a vicious war, the UN observers had no option than to flee the area. In many cases, including Bosnia, the peacekeepers had no mandate to use force and became silent observers of killings and brutalities.³¹

Changing nature of peacekeeping :

Over the period the concept of peacekeeping has also changed dramatically. As mentioned earlier, until recently, the UN was involved mainly in observing, monitoring or supervising peace among the agreed-up parties. Now the role and meaning of peacekeeping have changed dramatically and traditional peacekeepings simply can not meet the current needs and demands. Moreover, traditional peacekeepers are not trained and prepared for meeting the current challenges. Now peacekeepings need more combat troops with fighting power which many countries cannot or do not want to contribute.³²

Growing risks and danger of peacekeeping :

With the proliferation of conflicts, danger and risks of peacekeeping have also increased. Peacekeeping was always considered as an easy and safe job but gone are those days. Now peacekeeping is a risky and dangerous business. Recent conflicts are savage, brutal and involve mass killings often without any cause or reason. Peacekeepers are often taken as hostage and they are easily caught in between the fighting groups. Moreover, the young peacekeeping troops are not trained and prepared to deal with the horrors and brutalities emotionally and psychologically.³³

31. The Globe and Mail, May 2, 1994.

32. Golam Mostafa ; n. 25, op.cit. p. 58.

33. Ibid, p. 58.

Shortage of manpower and equipment :

In the light of the growing demands for peacekeeping troops worldwide. The UN cannot simply meet these needs. It has severe shortage of manpower and equipment. To maintain its current level of commitment and to fulfill its missions the UN needs hundreds of thousands of well-equipped and highly motivated trained personnel. In a recent attempt the Secretary General asked the member countries voluntarily submit lists of personnel and equipment that they can make readily available if they are asked for. But the response was shocking and disappointing.³⁴

Administrative, management and coordination problems :

Although the growing peacekeeping involvements worldwide the UN is also facing problems of administration, coordination and communications. There is no clear-cut rules who should command and control the peacekeepers. Although on principle, the Secretary General should be in charge, but there is no consensus and often there are conflicts and confusions. The major powers, particularly the US, want to influence the command and control of peacekeeping troops while the contributing countries want more say in the matter. As mentioned earlier, troops from 70 countries are involving in the UN peacekeeping, and it is often to difficult to communicate and interact among themselves because of culture and linguistic barriers.³⁵

The problems of funding :

There is an original provisions in the Charter for funding the peacekeeping. So for it has been shared by member countries collectively. But with the massive UN involvements, the

34. The Globe and Mail, April 29, 1994.

35. Golam Mostafa ; n. 25, op. cit. p. 59.

peacekeeping costs increased significantly. In 1992 the peacekeeping costs increased from \$ 700 million to \$ 2.8 billion. The current cost of peacekeeping is about \$ 3.2 billion a year of which about one-third is unpaid. Five members-the US, Russia, Ukraine, Japan and South Africa-who contribute about 55% of the total peacekeeping budget have the largest arrears. The Secretary General clearly expressed his frustration over the funding when he mentioned that after 6 months of peacekeeping missions in Bosnia only 9 members paid their contributions.³⁶

Recent developments in Somalia, Bosnia-Herzegovina and Rwanda demonstrate the problems, difficulties and limitations of the UN operation.

Analysis of why certain UN missions did not succeed reveals that there are some structural problems in the UN apparatus and, due to vested interests, roadblocks are often placed in the unfettered execution of some missions. A fundamental problem which has dogged UN peace-keeping operations has been the continuing disagreement over the allocation of authority under the UN Charter among the Security Council, the General Assembly and the Secretariat, represented by the Secretary General. It is imperative for a proposed UN peace-keeping mission to have clear objectives ensure voluntary and willing participation, have a workable chain of command, be based on a realistic assessment of what it will cost, have an assured list of contributors, and enjoy popular support and media backing. The non-assurance or infringement of one or more of these basic ingredients has resulted the failure of many mission. The UN Security Council is essentially a political body and its decisions have been swayed by political considerations in several cases. The five permanent members of

36. The Globe and mail, May 2, 1994.

the Security Council have often exercised their veto power to prevent an enforcement action of which they disapprove.³⁷

Another major problem has been one of the perpetual inadequacy of resources to implement urgent peace-enforcement resolutions of the Security Council. As rightly pointed out by the former President Bill Clinton of the US, "We have too often asked our peacekeepers to work miracles while denying them the military and political support required and the modern command and control systems they need to do their job as safely and effectively as possible."³⁸ Resources to execute various missions do not match the increasing demands being made upon the UN. Unless the G-8 countries are more forthcoming in contributing to ongoing and future UN peace-keeping and in liquidating their dues to the UN, the viability of peace-keeping missions will continue to be seriously undermined. The largest single defaulter is the US that currently owes over \$1 billion in arrears. In a letter to Congressional leaders, a bi-partisan group of Seven former US Secretaries of State recently urged the lawmakers to immediately pay the outstanding American debt to the UN. Expressing their deep concern that America is squandering its moral authority, leadership and influence in the world, the Secretaries said : "It is simply unacceptable that the richest nation on earth is also the biggest debtor to the United Nations..... Great nations pay their bills."³⁹

As the Secretary General mentions in "An Agenda for Peace" it is very hard to get the member nations to contribute troops, observers, as well as civilian workers, let alone commanders for

37. Gurmeet Kanwal, "Marginalisation of the United Nations : Impact of the Kosovo Conflict", in the Asian Strategic Review, 1998-99, Published by Institute for Defence Studies and Analysis, New Delhi, Nov. 1999, pp. 129-30.

38. Ibid, p. 130.

39. Ramesh Chandran "Great Nations Pay Their Bills, Say Former officials", Times of India, March 23, 1999.

U.N. peacekeeping operations. Maintaining the men, as well as contributing to peace keeping expenses is not easy. India's constant support of pre and post-cold war peace-keeping operations, observer missions, fact finding and good offices assignments, and also more, designated as representative of the Secretary General, cannot be ignored. India's contribution to the regular budget of the United Nations is not much, because it is decided on a sliding scale by the General Assembly, and so many factors are taken cognizance of, when deciding it. However, India's steadfast support to the original U.N. Charter, as well as its operation is laudable. Moreover, India has never been a defaulter, as far as U.N. dues are concerned, while the richest nation in the world owes more than \$ 1.18 billion or more to the United Nations. The Russia and many other member nations are also to pay the arrears. The financial crisis of the U.N. started with the Congo crisis, and increases every year with no sign of it being solved. The U.N. cannot do anything for itself, unless the member nations so desire. One would hope that on the completion of half a century of most fruitful existence of the United Nations would be freed from financial constraints, through the efforts of both developing and developed Member Nations of the U.N.⁴⁰ Currently, the United States is paying for 25 percent of regular U.N. operations. In contrast, the next largest contributor, Japan, is assessed 12.45 percent, while 44 percent of member-states pay the minimum assessment of one-hundredth of 1 percent. Regular budgets of the U.N. Secretariat are approved by a two-thirds majority of the General Assembly. Historically, then, countries that collectively pay less than 2 percent of the assessment have had enough votes to control passage of budgets. The poorer countries thus have a

40. Dr. Usha Sud, "United Nations and India : Saga of Cooperation," Vikas Publishing House Pvt. Ltd., New Delhi, 1996, pp-139-40.

vested interest in expanding U.N. largess by virtue of also being the biggest beneficiaries of it.⁴¹

The United Nations today faces three major financing and finance-related issues.

- ⇒ The UN has for some time been maintained on the edge of bankruptcy. Accumulated arrears in payments due to the UN from member states as of April 1995 amounted to \$ 3.1 billion, with some member states deliberately violating their assessment obligations. This has severely impaired the organization's ability to function effectively and prevented it from carrying out to the full some of its major activities.
- ⇒ Financing of the Organization has increasingly been made subject to political and other kinds of conditionalities. One member state in particular, the United States, which is currently contributing 25 per cent of the regular UN budget has made it a habit to withhold part of its dues and use this to press acceptance of various conditions. Thus, the practice already well-established in voluntary funding of UN activities by the major contributors has been extended to the regular budget as well. The excessive dependence on a single contributor-the United States has made the UN vulnerable also to trends in this country's domestic politics. In particular, events in the US Congress, which decides on financial contributions to international organizations, can have important consequences for the organization and can generate undue pressure on it.
- ⇒ The demands for UN Services, and the costs of the UN, exceed by far its regular budget. There is an increasing financing gap which is seriously undermining the organisation's ability to address the problems it is meant to tackle. So far, reliance has been placed increasingly on

41. Mark T. Clark, "The Trouble With Collective Security", in *Orbis*, Spring 1995, p. 254.

voluntary contributions by governments, mostly for development related programmes but also for other activities, to supplement regular budgets. However, the yields from the voluntary 'extra-budgetary' methods of raising funds have been relatively inadequate, uncertain, usually tied to specific programmes or activities and infused with other conditionalities. Resort to voluntary funding has undermined the democratic process in the Organization, since it allows major contributing states from the North to wield an even greater influence.

The deleterious impact on the Organization of these serious structural issues has been compounded by current policies to cut costs and rationalize. When applied indiscriminately across the board, such measures can seriously weaken and damage the Organization. Reducing costs and rationalizing the UN must be a constant concern, but always within the broader context of securing the resources commensurate to its mandates and enabling it to perform these functions fully and satisfactorily.

Financing thus emerges as a key policy challenge when considering UN reform. The future course and the nature of the UN will be determined largely by how the financing issue is resolved.⁴² As of 31 January 1995, total arrears of payment of contributions to the assessed budget of the United Nations were \$ 3.6 billion of which \$ 1.4 billion was against the regular budget and \$ 2.2 billion against the peace-keeping budget. The most disturbing part of the arrears picture was that out of the total arrears of \$ 3.6 billion, as much as 2.5 billion or 70 per cent were due from 5 top debtors.⁴³ viz. the United States owed \$ 1,070

42. "For a Strong and Democratic United Nations : A South perspectives on UN Reform", Published by South Centre, Chemin du champ-d Anier, Geneva, March 1996 pp 65 to 67.

43. Muchkund Dubey, "Financing the United Nations", in Indian Journal of International Law, Vol. 35 1995, Published by the Indian Society of International Law, New Delhi, pp. 157-58.

millions (\$ 527 million to the regular budget, and \$ 539 million for peace-keeping), Russia \$ 649 million (\$ 63 million and \$ 586 million), Japan \$ 334 million (\$ 152 million and \$ 182 million), France \$ 221 million (\$ 69 million and \$152 million), and Ukrain \$ 207 million, totalling \$ 2.481 million.⁴⁴

The arrears are of two types ; the first from a large number of very poor member countries which are unable to pay, because of their precarious ways and means and whose cumulative defaults of payment constitute a very small part of the total arrears ; and the Second, from a handful of top contributors as a standing blackmail against the United Nations. And among the top contributors, the United States is the biggest defaulter and also the most persistent blackmailer. These top contributors deliberately hold back their dues to compel the United Nations to reduce their sizes, to adjust their agenda and alter the thrusts of their activities in order to receive payment of their dues. And since a part of the dues is permanently held back, the pressure on the UN Organisations to restructure their agenda and activities has become the permanent feature of the life of the UN system.⁴⁵

The regular budget of the United Nations and those of the UN Specialised Agencies are financed on the basis of assessments related to a set of criteria laid down by the legislative bodies of these Organizations. As regards the UN budget, Article 17(2) of the Charter provides : "The expenses of the Organisation shall be borne by the members as appropriated by the General Assembly." Under this provision of the Charter, the General Assembly assesses for each member state the proportion of the expenses of the United Nations to be paid by it. The assessments is derived from the capacity to pay which is determined on the basis of usual

44. Official UN Communique, 8 February 1995.

45. Muchkund Dubey, n. 43, op. cit. p. 158.

economic indicators, including population, national income etc. The assessments are expressed in percentage terms which add up to the total UN budget.⁴⁶ A ceiling of 25 per cent limits what any state pays at present only the United States reaches that limit and a minimum percentage of 0.01 of the total budget is fixed for payment uniformly by a category of lowest income members identified for this purpose. The highest ceiling for the United States has been periodically coming down. It was a little under 50 percent when the United Nations was established. It came down to 33 percent in 1952, 30 per cent in 1955, 25 per cent in 1972 which is continuing till today. According to the criteria applied uniformly for determining the capacity to pay, the United States should be paying 31 per cent of the budget instead of 25 per cent.⁴⁷

Article 17(2) ensures that every member state would have participated in the discussion of the budget, including its own share, and that once the budget was approved by the Assembly, each member state becomes party to this decision, and is, therefore, automatically obliged to pay the assessment established for it. This is apart from the treaty obligation of every member state to pay its dues without any conditionality.⁴⁸ Article 19 of the UN Charter provides : "A Member (which) is in arrears in the payment of its financial contributions to the organisation shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote, if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."⁴⁹ The United States is clearly in default under Article

46. Article 17(2) of UN Charter.

47. Muchkund Dubey ; n. 43, op. cit. p. 159.

48. Article 17(2) of the U.N. Charter.

49. Article 19 of the U.N. Charter.

19, as the amount of its arrears far exceeds the amount of its contributions for the preceding two years. The United States also cannot get a reprieve under the last sentence of this Article, because its failure to pay is not due to conditions beyond its control. Such conditions arise only in the situation of acute economic difficulties. The United States has never been in such a condition, therefore, there is every justification for the General Assembly to suspend the voting rights of the United States. But this has never been done, on account of pragmatic political considerations.⁵⁰

The UN peacekeeping budget is also based on assessment, though the formula applied for making the assessment of the contributions of member states is slightly different from that applied to the assessments for the regular budget. According to the formula approved by the General Assembly in 1973, each of the five permanent members of the Security Council pay 22 per cent more than their share under the regular budget assessment criteria ; a second group of countries pays the same as in the regular budget formula ; a third group of countries pays one-fifth of its regular assessment ; and a fourth group pays one-tenth. According to this formula, the United States is to pay 31.7 per cent of the peacekeeping budget. The major contributors have defaulted on the payment of their contributions to the peace-keeping budget also. They are also reluctant, among others, on financial grounds to permit the United Nations to take on too many peacekeeping operations.⁵¹

Another problem with the regular budget is its excessive dependence on a handful of countries for sustaining the UN budget. Out of the total 1994 regular budget amounting to \$ 1,061.8 million, one state, i.e., the USA paid 25 per cent and 24

50. Muchkund Dubey ; n. 43, op. cit. p. 160.

51. Ibid, p. 160.

states paid 64.6 per cent. This concentration holds the United Nations hostage to the which of a few nations and enables these nations to exercise undue influence over the affairs of the UN System. Yet another problem with the UN budget is that it has to be paid in dollars. Many smaller and less developed Third World Countries suffer from serious dollar shortage and are therefore obliged to default in the payment of their dues.⁵²

The US Congress has linked the payment of arrears with tangible progress in UN reform. The US Administration believes that the UN, "while an imperfect institution, continues to be a crucial foreign policy tool "for pursuing its national interest and provides a means by which the US can obtain critical international support for its foreign policy pursuits. "Despite its weakness and problems, the United Nations still provides a forum for us to pursue and protect vital national interests."⁵³ The conditions imposed by the US Congress stipulate that the UN must reduce the overall US share of the UN budget from 25 to 22 per cent and the US share of peacekeeping from 31 to 25 percent. The toughest condition is that the UN agree to accept US \$ 926 million as the full amount of US dues against the UN claim of US \$ 1.6 billion as the amount owed.⁵⁴ The US is conscious that without the payment of its back dues, its credibility will be further undermined, its leadership challenged and its effectiveness eroded.⁵⁵

The UN can be peace-keeper or a peace-maker only when the

52. Ibid., pp 160-61.

53. Testimony of Ambassador Richard C. Holbrooke, US representative to the UN, before the Senate Foreign Relations Committee on November 3, 1999. Official Text released by the United States Information Service, New Delhi, November 4, 1999.

54. N.C. Menon, "UN not Enamoured of Arrears Breakthrough", Hindustan Times, November 17, 1999.

55. Gurmeet Kanwal, n. 37, op. cit. p. 131.

major world powers, including the P-5, agree on the disability of putting a UN label on their common will, as was witnessed in the Coalition Forces Joint Action against Iraq in the 1990-91 Gulf War. Since then, the increasing marginalisation of the UN Security Council in decision making for the enforcement of peace, has become a cause for concern. This has been a perceptible trend throughout the long drawn out enforcement of no-fly zones over Iraq since the termination of the Gulf War. On a number of occasions, the US has resorted to aerial attacks against Iraq without first obtaining Security Council approval. Also, there have been six conflicts in the last few years, most of them in Africa, in which individual states or regional groups have resorted to the use of force without specific Security Council authorisation.⁵⁶ However, it is now becoming increasingly apparent that the UN System is being progressively undermined in international affairs through the indirect actions of certain powerful Western Nations, led by the United States. The recent US-led North Atlantic Treaty Organisation (NATO) intervention in Kosovo is a case in point. NATO's decision to launch air strikes against Yugoslavia completely bypassed the UN Security Council and also violated a large number of international laws. This does not augur well for the future of the UN System and is a greater cause for concern than the failure of some UN missions.⁵⁷ The United States, for the achievement of most of its goals, would be the most powerful state in the international system whether or not there were a United Nations. Its status as a permanent member of the Security Council, and so its capacity to influence decisions of that body, adds to this ability. The power of the United States in the Security Council, for example, stems in large part from its inherent capabilities as a super power. It can often persuade other members

56. Ibid. p. 135.

57. Ibid, p. 129.

of the Council to vote with it from common principles of ideology and world order, or through rewards of side payments, or by implicit or explicit threats of punishment.⁵⁸

If the original vision of the United Nations has new life, then, there are also many unanswered questions about the shape of future international security arrangements. Indeed, by turning to the United Nations as a critical component of its Gulf Strategy, the United States brought to the surface both the hopes and the fears surrounding any discussion of collective security. If today's transformed international environment raises the hope that the collective might of the international community can protect the weak against the strong, as originally intended in the UN Charter, it also raises concerns that the strong will seek to impose their vision of world order on the weak, without regard for the principles of national sovereignty and non-interference in domestic affairs also enshrined in the UN Charter. If the UN's full potential as an instrument of collective security is to be realized, four clusters of questions need to be addressed with some urgency :

- ⇒ Who should have the authority to decide when to invoke the Charter's collective security provisions, or more precisely, which countries should be represented on the Security Council and how should it take its decision ?
- ⇒ Who should be authorized to oversee the implementation of sanctions and the use of force once these steps have been mandated by the council ?
- ⇒ When should the UN decide to become involved in a local conflict and when should it leave this burden to regional organizations or to the parties themselves ?

58. Bruce Russett, Barry O'Neill and James S. Sutterlin", *Breaking the Restructuring Logjam*", in Bruce Russett, ed., *"The Once and the Future of Security Council"*, Macmillan Press Ltd. London, 1996, pp. 157-58.

⇒ Who pays the bill when the UN is asked to serve as world policeman and how are the funds to be raised ?

The UN Charter speaks to all of these concerns to some extent, of course, but fuzzy answers that seemed acceptable in the days when the UN was usually left setting on the sidelines are inadequate as the Organization enters the centre ring of international security politics for the first time. In the days ahead, these provisions are likely to be tested as never before.⁵⁹

Who Decides ?

It is clearly the Security Council—the subject of all 13 articles of Chapter VII—that has full and unrivaled responsibility for determining when and how collective security steps will be undertaken. Only the Council has the authority under international law to make decisions that are binding on all member states. So with the new-found cooperative spirit among the five permanent members none has cost a veto on a substantive issue in almost few years has come increasing discussion among the whole UN membership about the composition of the Council itself. The more active and assertive the Council becomes, the more the 150-plus member states not on the Council will multer about decisions it makes in their name but without their input. The Persian Gulf War was a striking case in point. Although initially there was widespread excitement in the UN about the close collaboration of the five permanent members of the Security Council, over time the disenfranchised expressed growing apprehensions. They included both developing countries, concerned about their exclusion from UN decision making, and leading developed countries like Germany and Japan, which were expected to shoulder much of the cost of the UN-authorized

59. Edward C. Luck and Toby Trister Gati, "Whose Collective Security ?" in Brad Roberts ed, "U.S. Security in an uncertain Era," A Washington Quarterly Reader, MIT Press, Cambridge, Massachusetts, London, England, 1993, pp. 227 to 229.

operations but were largely excluded from key decision-making sessions. Simply put, during the Gulf Crisis most UN members were left out of the process of consultation and deliberation that led up to the resolution authorizing the use of force. Even the 10 elected, nonpermanent members of the Security Council professed frustration that the permanent five met alone under the U.S. leadership to design security policy and then presented them with a fait accompli to be voted up or down. For the rest more than nine-tenths of the UN's total membership-the system seemingly afforded no say at all. They were not involved in the consultations, and their assent was necessary according to the Charter even on decisions that could bind their actions.

Even some American allies, who once complained that the United States failed to use the UN, now fret that it may use the world body too much, turning it into a mere instrument of U.S. foreign policy. On the other hand, if the middle and smaller powers seek to make the UN a mechanism for constraining U.S. power, then trouble could lie ahead. The UN cannot succeed without strong, constructive U.S. leadership, while the United States needs the U.N. to manage and promote a fair international division of labour and burden sharing arrangements on security as well as development issues. The Security Council could not work under cold war conditions, but sustaining a balance of interests in a post-cold war world in which the United States is the only remaining superpower will also be a challenging proposition for all concerned.⁶⁰

Who Enforces the Peace ?

The war with Iraq displayed both the strengths and weakness of the UN system of collective security for all the world to see. The UN itself proved to be a remarkably good forum for rallying

60. Ibid, pp. 229-30.

an international political response to naked aggression, yet when it came to using force, the carefully laid out provisions in Chapter VII of the UN Charter, were never invoked. The UN's authority was proclaimed everywhere including most visibly in the U.S. Senate-up to the point of authorizing the use of force, and again the UN came front and centre in the effort to clean up the mess left by Desert Storm. But the world body seemed to fade once again into irrelevance when the fighting was progress. There were, of course, good reasons for this pattern ; after all, the evolution of international relations has not yet reached the point at which most nations are ready to accept international command of their forces in combat. And there is reason to question whether a UN Command could have prosecuted the war as efficiently as the coalition and with as little loss of life among allied troops. But there were political costs to excluding the world body completely, including a loss of credibility both for the United Nations and for the concept of a "new world order."

For all its shortcomings, no one has been able to advance a more credible plan than the UN Charter for carrying out Collective Security. Moving beyond "peaceful settlement of disputes" under Chapter VI of the Charter to enforcement actions under Chapter VII, has put the UN into largely uncharted territory. The Kuwaiti crisis of 1990 led to a highly improvised application of collective security principles in the UN Charter, while the Charter's professions for UN enforcement of security (Military Staff Committee, UN troops, UN command) were circumvented. Whether the UN collective security structures envisioned almost half a century ago, with the various peacekeeping mechanisms that have evolved since, can be reshaped to make the UN a potent agent for international security-and whether the major powers have sufficient commitment to making them work-is an open question.

The resistance of major military powers to consideration of a unified or UN command and the general reluctance of member states to negotiate "special agreements" for standby forces under article 43 of the Charter bespeak the difficulties involved. Article 43 goes to the heart of the matter because the UN at present has no forces automatically at its disposal and must appeal to the members to volunteer forces even for non-combatant peacekeeping missions. This sometimes results in significant delays in responding to urgent crisis, reducing the world body's credibility as a potential deterrent to would be aggressors. In a long-forgotten passage of the 1945 UN Participation Act, which defined U.S. relations with the new United Nations Organisation, Congress acknowledges that Article 43 agreements, should they be concluded between the United States and the UN, could well turn the command of those U.S. forces over to the Security Council and thus possibly to non-American officers. This might be seen today by many Americans as ceding too much of the president's authority as commander-in-chief to a multilateral body.

It should not be forgotten, however, that the United States would retain a veto in the Security Council over the commitment of any UN forces. There are no precedents, moreover, so it would be quite possible to consider negotiating Article 43 agreements with the UN that would stipulate that the standby forces would be put at the UN's disposal only under conditions and circumstances specifically agreed to by the president and/or Congress, and only with their consent. In other words, the United States could designate certain units, and perhaps give them special training for participation in prospective UN collective security operations, without committing them to the UN in advance. It is time for the United States to open quiet consultations with the other permanent members of the Security

Council about the possibility of all five nations negotiating simultaneous Article 43 agreements with the UN. Other UN member states should also be encouraged to negotiate stand by agreements.⁶¹

When Should the UN Intervene :

With increasing opportunities for UN intervention has come a growing need to choose when UN involvement is most appropriate and a renewed debate about where national sovereignty ends and international responsibilities begin. The UN Charter gives the Security Council considerable freedom to "determine the existence of any threat to the peace, breach of the peace, or act of aggression... and to decide what measures shall be taken" (Chapter VII, article 39). And, under article 99, the Secretary General is authorized to bring to the attention of the Security Council those items that "in his opinion" may threaten international peace and security. Although the preamble lays out a series of principles and proposes that sound universal, the remainder of the Charter describes a decision-making structure that is highly political and selective. In practical terms, then, most of the responsibility for deciding when, where, and how these sweeping principles will be applied rests with the members of the Security Council. Theirs necessarily must be a subjective, rather than an objective judgement. Thus, council members chose to respond vigorously to the Iraqi invasion of Kuwait, but they showed no inclination to get involved in the strife in Liberia, Ethiopia, or the Sudan that raged at the same time. To some observers, this selectivity undermines the credibility and integrity of the institution as a global peacekeeper, but to others it is a sensible how to reality in view of the UN's limited capabilities and capacity for influencing events.

61. Ibid. pp. 232-33.

Will it simply be, as many smaller nations complain, that the UN will get involved only when the interests of the five permanent members are demonstrably involved (Kuwait being a case in point) but when none of them can or wants to handle the situation unilaterally ? In that case, how will the security interests of developing countries that are not deemed strategically important get addressed ? There is a growing danger, for instance, that conflicts in Africa will be essentially excluded from the map of Security Council interests. Over time, it may be useful to try to develop generally applicable rules of intervention regarding when the collective security provisions of Chapter VII should be invoked. For example, specific kinds of events, threats, or situations might automatically trigger Security Council action, such as the possibility that weapons of mass destruction might be used in a regional dispute, clear evidence of genocide, a huge flow of refugees that threatens to destabilize neighbouring countries, massive human rights violations, the overthrow of democratically elected governments, or flagrant violation of earlier Security Council decisions. Not one of these questions has a simple answer, but each is worth grappling with if the concept of new world order is to be based on sustainable and broadly credible political and legal norms.

The increasing demand for U.N. security services, especially in internal or transnational conflicts, has also raised pointed questions about the capacity of the organization to deal with so many security problems simultaneously. The UN Charter does not assume that the Security Council will address all security problems or that it will necessarily be the first recourse in case of threats to international peace and security. Article 52, in fact, calls on member states to "make every effort to achieve pacific settlement of local disputes through regional arrangements or by

regional agencies before referring them to the Security Council". Chapter VIII, probably the least explored territory in the Charter, addresses the possibilities for coordinating the efforts of regional bodies and the Security Council aimed at both peaceful resolution and enforcement of council decisions. One of the most fundamental questions facing the UN today is whether principles of collective security-and other global norms-apply to individuals and groups within states or only to relations between member states themselves. If the latter, then nations could be allowed to do to other nations. On the other hand, if the international community can tell states how they should treat their own populations, how are these verdicts to be enforced ? Many still feel reluctant to condemn the violation of human rights or disregard for basic human needs when there results from internal political breakdown or civil war. It is only in recent years that the international community has come to accept the idea that certain domestic policies (e.g., apartheid, genocide, and other massive human rights violations) should not be tolerated by the community of civilized nations. Yet the Security Council remains cautious about labeling even gross rights violations within established borders as " threats to international peace and security "requiring Chapter VII action, at least beyond economic or arms transfer sanctions in especially egregious and persistent cases.⁶²

Who Will Pay the Bill ?

There has clearly been no "peace dividend" for the UN peacekeeping, arms monitoring, and collective security budgets. The more these services are demanded by the international community, the higher the costs to the world body. Once a small fraction of UN spending, with the launching of the Cambodia operation the costs of peacekeeping operations alone may soon

62. Ibid, pp 235-237.

exceed the whole regular budget of the United Nations. Although puny compared to the costs of national defence or of local conflicts prevented or contained, these expenditures loom very large in UN eyes. If the UN begins to undertake collective security operations directly, then its expenses will multiply many times. Operation Desert Storm, for example, cost 10 times as much as the annual outlays of the entire UN System, including all of the specialized agencies. Even a more modest collective security operation would be very expensive by UN standard. These new demands come at an awkward time for the UN, which is still struggling to overcome the painful effects of massive U.S. financial withholding during the mid-1980s and of smaller delinquencies by other member states. The United States is clearly a lot more ready to enunciate a new world order than to help pay for it. Russians are clearly supportive of the principles of the UN Charter and supportive of recognizing the right of international community to intervene, they may not be able to contribute even their assessed dues on time, much less extra for new peacekeeping operations in the next few-years. although the United States cannot solve the UN's financial problems alone, it could at least set a good examples for others.

The most obvious problem has been the virtual elimination of the UN's modest reserve funds, leaving no discretionary funds that could cover the start-up costs for a new operation until the hat can be passed around the member states for longer-term support, subsequent delays in payments from major donors, like the United States, tend to compound the problem. Another endemic problem has been the separation of substantive and budgetary decision making within the UN. Under the Charter, the Security Council has authority over the former and the General Assembly over the latter. The U.N., of course, can offer a forum both for sorting out

the division of Labour in carrying out such operations and for developing a formula for sharing the financial burden.⁶³

The United Nations was founded to keep world peace. In this it has been failing woefully. Since the UN's founding there have been roughly 130 military conflicts with 16 million fatalities. While it would not be fair to blame the U.N. for the globe's many wars, since no other Organization has succeeded in halting war, the U.N. must bear the responsibility for its other failings. One of the most serious is the double standard with which the U.N. treats a number of key matters viz., human rights, and other serious issues. A similar double standard exists in the economic area. The U.N. agenda is dictated by what former U.S. Ambassador to the U.N. Jeane Kirkpatrick calls the "automatic majority" of third world representatives. They blame their economic problems on the developed world and concentrate on resources transfers, redistributionist schemes, and on condemning Western Transnational Corporations. Free market approaches to economic growth hardly receive a hearing at the U.N. While sustainable economic growth depends chiefly on private sector activity, the U.N. development program, the U.N.'s principal economic development organizations, provide virtually all of its services and funding directly to governments. In the U.N. System, the West consistently is blamed for international problems. The West is held responsible for Third World poverty. Summary of Major problems with the U.N. are as follows :⁶⁴

63. Ibid, pp. 237 to 239.

64. Charles M. Lichenstein, Thomas E.L. Dewey, Juliana Geran Pilon and Melainie L. Merkle, "The United Nations : Its Problems and What to Do About Them, "in Joachim Muller ed,"Reforming the United Nations, New initiatives and Post efforts, Vol. II, Published by Kluwer Law International and in Co-operation with the United Nations, the Hague, London, Boston, the Netherland, 1997, pp. III 14.4 to III 14.6.

- ⇒ Lack of fiscal responsibility and accountability.
- ⇒ Too much bureaucratic fat in the Secretariat.
- ⇒ Violation of the principle of an impartial international civil service, through the abuse of "secondment" and salary "kickbacks."
- ⇒ Use of the UN Secretariat and of diplomatic missions for espionage against the US.
- ⇒ High US costs for hosting the UN.
- ⇒ Outdated, obsolete, and duplicative programs.
- ⇒ Too few open meetings.
- ⇒ Too many "limited" nonpublic materials.
- ⇒ Regional block paralysis of the Security Council.
- ⇒ General Assembly loss of credibility.
- ⇒ Violations of the UN rule of universality, by exclusion of some countries from participation in UN organs.
- ⇒ Encouragement and legitimization of terrorism.
- ⇒ Failure to address human rights violations evenhandedly and without bias.
- ⇒ Failure to keep the peace even within the limited powers of UN by failing to provide impartial peacekeeping forces.
- ⇒ Ineffective, propaganda-ridden approach to disarmament issues.
- ⇒ Cheating the Third World in economic development by failing to offer a variety of proven economic options.
- ⇒ Biased UN Information system.

As the heritage of the Cold War is being overcome, processes of internationalization and globalization of the economic and political life of contemporary states are taking deeper roots, and their interdependence is growing. These processes are exerting a

mainly positive influence upon the development of the world economy and trade, the distribution of technological achievements and public wealth, democratization, and the protection of human rights.⁶⁵

At its special session in 1990, the UN General-Assembly adopted the Declaration on International Economic Cooperation, in which the member states proclaimed their", strong commitment to a global consensus to promote international economic cooperation."⁶⁶ The General Assembly in 1991 adopted a resolution on restructuring and revitalizing the UN in the economic, social and related fields, largely aimed at the role and functioning of the UN Economic and Social Council.⁶⁷ The completion of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) and its future transformation into a World Trade Organization within the UN system clearly demonstrates that economic globalization is being effected in the activities of the UN. To monitor agreements and to improve the conditions for revitalizing the UN in economic, social and related fields, various safeguards are emerging in the form of different international arrangements and structures. The world summit for Social Development, held in Copenhagen in 1995, the United Nations Conference on the Environment and Development (UNCED) in Rio de Janeiro, and the World Conference on Human Rights in Vienna, in addition to other meetings of this kind under the auspices of the UN, are a clear indication of the efforts undertaken by the UN in these fields.⁶⁸

The violation of human rights of ethnic and national minorities

65. Lev Voronkov, n. 5, op. cit. p. 7.

66. Basic Facts About the United Nations", Department of Public Information, United Nations, New York, 1992 pp 94-95.

67. Ibid, p. 95.

68. Lev Voronkov, n. 5, op. cit. pp 78.

is causing violent conflicts on an international scale. The Article 1(2) of UN Charter speaks of the promotion of human rights and fundamental freedoms for the creation of friendly relations between states. It is absurd to promote human rights with a view to "creating friendly relations among states", by resort to interventionist, coercive or military measures. Military or economic sanctions are not the right means for promotion of such rights. Such measures cause more violation of human rights by killing of innocent persons, forces mass migrations as refugees, etc. Economic sanctions are usually counter productive because in the first place, as experience has shown, there cannot to be any airtight leak proof economic sanctions ; economic sanctions obstruct the free flow of international trade causing hardship to individuals, loss of employment etc., both in developed and developing countries. Besides, economic sanctions put a premium on inflation, cheating and illegal trafficking in goods.⁶⁹

While there is justifiable international concern for human rights and there is no difference of opinion as to the desirability of observance of human rights by all states, there are differences as to how these can be promoted or tackled. Third World developing countries are opposed to the use of any coercive measures for bringing this about. They made their position clear at the Vienna Conference on human rights 1992. They reject the claim of affluent countries 'right of intervention, as infringement of their sovereignty and independence'. They also feel that the list of human rights drawn in the Human Rights Declaration of 1948 needs to have a second look so as to take into consideration the

69. C.S. Jha, "Fifty Years of UN And The Future", in India Quarterly, A Journal of International Affairs, Vol. L III Nos. 1 & 2, Published by Indian Council of World Affairs, Sapru House, New Delhi, January-June, 1997, p. 13.

view points and conditions and traditions prevailing in the poor and developing countries. For the latter removal of poverty and the right to live in freedom from poverty, ignorance and disease are among the most precious and basic human rights and fundamental freedoms.⁷⁰ The lack of acceptance of these rules and practices in the former Yugoslavia, Moldova, Georgia, and Nagorny Karabakh are cases in point. There are unfortunately many other places in the world which can erupt into conflict (among which are Latvia and Estonia) where these rules and practices are not accepted in full. Proper attention to these rights and their protection should become a vitally important element of any preventive diplomacy.⁷¹ The machinery and the methods of UN are fundamentally sound. They need only strengthening.

The animation of radical nationalistic movements in different countries, including those of the West, in the result of not only worsening economic and social conditions, but also one of the consequences of the rapidly developing process of internationalization and globalization. The UN Secretary-General in his lecture at Columbia University on 7 February 1994 remarked that indirect forces of globalization are felt everywhere : "This has created an overwhelming sense of insecurity. As a result, tribalism, nationalism, protectionism and fundamentalism increasingly appeal to the alienated individual." The international community in general, and the UN in particular, have to address both the positive and negative implications of these processes.⁷²

Along with these processes of internationalization and globalization in the fragmentation, or regionalization, of many

70. Ibid, p. 12.

71. Lev Voronkov ; n. 5, op. cit. p. 8.

72. "UN Weekly," United Nations Information Service", Vienna, Vol. 10, Number 7, 15 February 1994, pp. 2-3.

aspects of world society. In the Cold War era, most instances of meaningful multilateral cooperation occurred outside the UN System, particular in regional areas. There is an extensive network of intergovernmental and non-governmental organizations in different regions dealing with problems that concern the UN. To name but a few : in international peace and security, there is the Conference on Security and Cooperation in Europe (CSCE) ; in economic cooperation, the Association of Southeast Asian Nations (ASEAN) ; and in human rights, the Council of Europe. However, many of these organizations are either only formally connected with the UN, or not associated with it at all. The Palme Commission in 1982 proposed a strengthening of regional cooperation and the establishment of links between regions and the UN.⁷³ The promotion and further development of regional cooperation constitutes a stabilizing factor in the system of international peace and security. The experience of Western Europe already has demonstrated that the deepening and widening of regional integration creates extensive spheres of common interests in different fields and lessens the threat of violent resolution of possible conflicts. In this way, regional integration could contribute to the strengthening of international peace and security.⁷⁴

Among the dangers to organised stable international life in recent years in the phenomenon of terrorism and militancy. Hordes of outlaws frequently allied with religious fundamentalism or secessionist movements by ethnic or other group, or to mafia and drug traffic cartels, armed with modern weapons of destruction are posing serious threat to peace and stability of

73. SIPRI Yearbook 1993, World Armaments and Disarmaments, SIPRI (1993), p. 22.

74. Lev Voronkov n. 5, op. cit. p. 9.

states. The fact that terrorism and militancy are frequently externally sponsored and supported gravely compounds the dangers. The responsibility for this situation in so far as it concerns the availability of arms to terrorists rests on arm-rich, big powers and affluent countries who during the decades before the end of the cold war pumped modern weapons all over the world. There is a real danger of nuclear material and nuclear and other weapons of mass destruction falling into the hands of terrorists and militants. The big powers acknowledge the dangers arising from terrorism but are selective in their condemnation of terrorism. If the latter is sponsored or supported by friendly and allied countries they are either silent or their criticism is muted. Sometimes they refuse to see the obvious. It is the responsibility of the big powers to take positive action for the vanishment of terrorism through the UN and outside.⁷⁵ The UN Declaration of October 22 to 24, 1995 called on the international community to act in concert to defeat common threats such as terrorism in all its forms, trans-national organised crime, illicit trade in arms and the production, consumption and trafficking of narcotics. Despite the near-unanimous adoption of the 1995 UN Declaration, many countries have repeatedly failed to cooperate with the Security Council in disarmament and non-proliferation and have flouted sanctions imposed by the Security Council with impunity.⁷⁶ According to UN Secretary General Kofi Annan, "The scourge of terrorism cannot be eliminated by unilateral action. Terrorism can only be combated by joint international strategies and action. The UN should take a leading role in such efforts."⁷⁷

75. C.S. Jha, n. 69, op. cit. p. 17.

76. Gurmeet Kanwal, n. 37, op. cit. p. 134.

77. Siddharth Varadarajan, "Strong and Fresh Kofi", Times of India, October 12, 1998.

On disarmament the Charter provisions are weak. There is no concept of general and complete disarmament, the Charter nearly talks of regulation of armaments ; arms control ; and 'possible disarmament Art 47(1). The Military Staff Committee established under this Article has done little. So far on this issue. The Charter's deficiency on disarmament particularly nuclear disarmament has to be made good. The burgeoning agitation against the manufacture, possession and use of nuclear weapons must be pursued in the UN. Seeing that the peoples of the world are increasingly demanding it and the nuclear weapon powers are themselves pledged to work towards the abolition of nuclear weapons in Art. VI of Nuclear Non-Proliferation Treaty, the proposal for a nuclear weapons free world should receive overwhelming support in the UN. The purposes and principles of the UN should specifically include general and complete disarmament and nuclear disarmament.⁷⁸

There are still many problems to be resolved with the transition from the cold war to the cooperative security of the 21st Century. We are not able to meet the new challenges by means which were effective under completely different conditions in world politics. Due to the unprecedented changes in the contemporary world, the political goals and aspirations of different states are the subject of considerable transformations which are being reflected in their military doctrines, concepts of national and international security, understanding of national interests, means of inter-governmental politics and in their perception of global problems. More cooperative concepts of security on global and regional levels are emerging and taking roots. The concept of security in terms of military power and nuclear deterrence had

78. C.S. Jha ; n. 69, op. cit. pp. 16-17.

pushed the world to the verge of self-destruction. The accumulation of military power, which promised to strengthen security, in reality undermined it in many respects. Now the role of military power in ensuring security requires a new approach and fresh appraisal. However, at the same time one can see tendencies with the UN to respond properly to this kind of problem. Agenda for the 21st Century, adopted by the UN Conference on Environment and Development in Rio de Janeiro was the first responsible attempt of member states to devise a code of behaviour for humanity for the next century, both in the ecological sphere and in the field of international relations.⁷⁹

79. Lev Voronkov ; n. 5, op. cit. pp. 15-16.

CONCLUSION AND FUTURE PROSPECTS

CHAPTER VII

CONCLUSION AND FUTURE PROSPECTS

The concept of collective security has been the primary motivating force behind the two international organizations of our time-the League of Nations and the United Nations. However, in both organizations the theoretical framework which the drafting countries agreed upon in 1919 and 1945 was different from the "ideal theory" of collective security. And the practice in both cases turned out to be still different from the norms, procedures and aims agreed upon at the time of their inception. As noted earlier, the League Covenant only very loosely institutionalized the idea of collective security and was a far cry from a perfect design of collective security. In practice, even the limited obligations which the states signatory to the Covenant undertook were not adhered to. The international solidarity as represented by the League was too hesitant to face and too feeble to overcome the aggressive will of a derelict state. In cases where a Member-State persisted in having its way by force, the League's action was governed by the realities of international power rather than by the laws of international justice. Nonetheless, the League experiment marked a significant development towards a collective security system.

However, the experience of the League influenced the drafting of the United Nations Charter. Many of its features are indicative of conscious efforts to avoid the deficiency of the previous world organizations and to strengthen the institutional system at points where weakness had become evident. In its basic character, however, the United Nations remains similar to the League. In contrast to the League Covenant, the Charter envisaged a centralised mechanism of peace-enforcement, and made its functioning dependent on a firm nucleus of Great-Power agreement.

The security arrangements of the United Nations do not constitute a system of collective security. Neither have the UN Charter provisions nor have the UN precedents facilitated in transforming the UN security system into a full-fledged collective security system. The implementation of even the limited scheme of security that is envisaged in the Charter, has not been politically possible. In fact, the developments in the UN during the last fifty seven years have driven the UN, further away from a system of collective security. The reasons why the Charter-makers did not create a full fledged collective security system, or why the UN politicians did not attempt to transform the UN security system into a collective security system, may be explained in two ways. One, neither had the Charter-makers nor had the UN politicians still a clear concept of collective security or a consistent policy on the establishment of a genuine system of collective security. The other, the world not yet ready for the system of collective security, i.e., the prerequisites that prepare the soil and fix the environment for collective security are not yet present in the world.

As far as U.N. collective security action is concerned UN has been able to take action only in three instances. Firstly, in 1950 the Security Council was able to take action against North Korea under Art. 42 to repel aggression against South Korea. Secondly in 1966 against Rhodesian break away white minority regime under Art. 41 of the Charter. In Rhodesia the Security Council had been able to take action under Art. 41 in the nature of diplomatic and economic sanctions. The UN action was found ineffective but no action was taken under Art. 42, as required. Thirdly, between January 17 and February 28, 1991, an international military coalition sanctioned by the United Nations and led by the United States defeated a large, well-equipped Iraqi army and forced it to withdraw from occupied Kuwait. The United Nations Security Council promptly called for Iraq's complete and unconditional withdrawal from Kuwait. Stiff economic sanctions

were imposed. In the face of vigorous encouragement by the United States, the UN Security Council further authorized enforcement action against Iraq.

The aspirations of the framers to create a workable collective security organisations have proved futile due to the following factors :

(i) The post war world has not produced the conditions that could have facilitated the translation of the Charter theory of collective security into a political reality. The power diffusion in U.N. era has been most unfavourable to collective security because of bipolarization giving rise to two super powers US and USSR engaged in maintaining a dominant position. The ideological conflicts between these two super powers have proved an impediment in the growth of conceptual consensus and procedural pattern for the development of collective security system under U.N. In the early years of its functioning the UN was so much influenced by the US due to its military power and financial grants that two-third members of the organization were with it and the working of the UN appeared as an anti-communist alliance rather than a neutral world organization. This ideological conflict in the organization led to the development of mistrust and fear psychosis and led to the cold war and the development of nuclear and thermo-nuclear armament race and thus destroyed the very basis of concept of collective security. The concept of collective security which is based on the assumption of partial disarmament to deter a potential aggressor by threat of using adequate military force through UN action disappeared due to Great Power rivalry and the concept was made less necessary, less feasible and less credible. All these happenings led to the failure of collective security system which requires that no one state should be so strong as to resist the collective will of others.

(ii) As Richard Betts has noted : "Reborn enthusiasm for collective security is fueled by confusion about which is the cause and which is the effect in the relation between collective security and peace, and by the conflation of present security conditions (absence of a threat) with future security functions (coping with a threat). This conceptual confusion raises doubts about the congruence of form and function in a collective security system. Is the system designed in a form that will work in conditions where it is needed, or does the form reflect conditions where it is not needed ?" In other words, the very rebirth of enthusiasm for collective security at the end of the cold war leads to the suspicion that the conditions that make it now seem possible (peace-absence of a threat) will lead to its demise when inevitably the conditions change. For, "a system designed in good times to cope with bad times should be judged in terms of bad times rather than good times."¹

Even in the Persian Gulf war, where conditions were most favourable for a collective response, the successful coalition effort required six months of preparation and training in conditions of relative peace. Indeed, the Persian Gulf War is probably not the best test case for collective security because of its many unique and favourable conditions. A partial list reveals that Iraq was the clear aggressor, while its allies and supporters were weak and ineffective ; its pattern stood on the sidelines ; Iraq did not press its advantage when coalition forces were most vulnerable ; a huge and richly endowed modern infrastructure existed in the host country ; the operation was financed largely by wealthy countries ; military action remained firmly under American command and control ; quantitative and qualitative superiority existed for

1. Richard K. Betts, "Systems for Peace or Causes of War ? Collective Security, Arms Control and the New Europe", *International Security*, Summer 1992, pp. 6-8.

coalition forces ; the terrain and weather were favourable for counter attack ; Iraqi morale was extremely low ; Iraqi forces were vulnerable to coalition air power.² As Inis Claude has noted : In the Persian Gulf War, Iraq's aggression against Kuwait" was the collective security theorists dream case the flagrant and lonely aggressor, overwhelmed by a substantially united international community." Yet even so, support for Operation 'Desert Storm' was uneasy and tentative. In the United States, Congress was divided and approval was granted by some members with obvious reluctance. It seems evident that the modesty of support for collective-action in this case negates any expectation that the world is likely to be united in determination to act against aggression in all future cases.³

(iii) Apart from these factors there are other serious procedural deficiencies left in the Charter which have resulted in the failure of the collective security system such as :

- (a) Lack of force due to non-implementation of Art. 43 ;
- (b) The veto, and
- (c) The right of collective self-defence.

(a) Lack of Force due to non-implementation of Article 43 :

The Charter has made provisions for the availability of force for UN action. Members commit themselves to make available to the Security Council armed force under agreement to be negotiated under Art. 43 of the Charter. The agreement so entered into

2. Stephen John Stedman, "The New Interventionists," Foreign Affairs, Spring 1993, p. 7, See also Jeffrey Record, "Defeating Desert Storm (and why Saddam Didnt)," Comparative Strategy, Apr-June 1993, p. 125.

3. Inis L. Claude, Jr., "The Gulf War and Prospects for World Order by Collective Security" in Robert F. Helms II and Robert H. Dorff ed." The Persian Gulf Crisis : Power in the Post-Cold War World", Preager Westport Conn, 1993, PP. 26-27.

between Security Council and the member States will specify the number of troops, their type, degree of readiness, their general location and the nature of facilities and assistance which the states commit to make available to the UN. The Security Council can plan for combined action of national air force contingents only within the limits laid down in the special agreements. The provision has made the entering into agreement voluntary and there is no binding legal compulsion upon the states for the same. If the individual members do not choose to enter into agreement there is nothing in the Charter to force them to make such agreement.

No special agreement envisaged under Art. 43 has so far been entered into. Both in the Security Council and in the Military Staff Committee, the big powers failed to agree on the principles that should govern the agreements to be concluded between the Security Council and the members for the peace maintaining efforts of the U.N. They clashed over fundamental issues such as the size and the composition of the forces, the basis of contribution. Use of bases, the right of passage, the location of such forces and their withdrawal after the completion of their respective missions. They failed to agree on the interpretation of Art. 45 as well.

(b) The Veto (Article 27) :

Another reason for the failure of U.N. collective security can be largely attributed to the lack of big power agreement. The big power 'veto' is also to a great extent responsible for the failure of the U.N. collective security system. the right of veto i.e., power to undo the decision of the majority by a negative vote, has been given to the five permanent members. It has been incorporated in the Charter on the insistence of Big five. Small powers wanted

this right to be deleted, but they were told that there would be no organisation without it. It was argued that if the Big powers could agree, their strength would make U.N. irresistible, if they do not, then it would be futile to have the organisation or to try coerce them. The effect of the veto provision is that it destroys the possibility of collective measures under Chapter VII against an aggressor. Because no determination of the threat or breach of peace or act of aggression or even discussion of the measures of enforcement is possible without big power support or abstention, consequently, the determination of the responsibility for the use of force becomes ineffectual against their will.

(c) The Right of Collective Self-defence (Article 51) :

Yet another formidable gap found in the Charter which has effected the realization of U.N. collective security system is the right of collective self-defence found in Art. 51 of the Charter. The use of force in collective self-defence as in individual self-defence has been limited by the qualifying words 'if armed attack occurs' i.e. its invocation is permitted against an armed attack. But the concept of 'collective self-defence' has not been defined in the Charter. In its common meaning it should be taken that when two or more states have been attacked by one or more states simultaneously the attacked states may act collectively against the common aggressor. It was incorporated in the Charter to safeguard or to give legal cover to the acts of existing regional pacts and the 'Monroe doctrine' of America. The purpose was that the regional arrangements should have freedom of collective action against an aggression, independent of the Security Council's authorization as the Security Council could be blocked by the 'veto' of one of the great powers, and to keep their defensive action within the limits of the Charter. The right of collective self-defence is said to have been devised to fill up the gap in the system of collective security

caused by the temporary incapacity of the Security Council to intervene.

The theory and practice of collective-security after the cold war forced a potentially intractable problem of 'escalation managements. collective security may be powerless in the face of accelerated nuclear proliferation. Even prior to the nuclear age, collective security suffered from the contradiction that it sought to encourage escalation in the short term in order to bring about deescalation later. This deescalation by escalation is highly risk acceptant even in the absence of weapons of mass destruction. Post-Cold War nuclear proliferation, even if well-managed, is almost certainly on a collision course with collective security, to the probable detriment of the latter.⁴

Collective Security as 'crisis management' aims to reduce the likelihood of war by convincing potential aggressors of the inevitability of their overwhelming defeat. A problem with this approach, even before the nuclear age, was the risk that it would frighten the state being deterred into launching preemptive attack at one or more members of the security coalition. As an approach to war termination, collective security recommends the threat of war widening as a means of 'inter-war deterrence' and 'conflict resolution'. The approach calls for leaders who are willing to make believable threats of escalation now in order to achieve deescalation later. An international system with significantly greater proliferation of weapons of mass destruction and of long range delivery systems involves high risks for collective security as an approach to deterrence and to 'crisis management'.

The extraordinary changes of the post several years in

4. Stephen J. Cimbala, "Collective Insecurity" U.S. Defense Policy and the New World Disorder," Greenwood Press, London, 1999, P. 125.

international politics suggest the possibility that the collective coercion to keep the peace foreseen in the United Nations Charter could at last become practical. Yet, despite the magnitude of changes and rhetorical flourishes about a "new world order" following the Gulf War, little public or policy discussion of the practical opportunities for and obstacles to collective security has thus far evolved. The report issued by UN Secretary-General Boutros Boutros Ghali in mid-June 1992 provides, as requested by the first-even Security Council Summits, a number of suggestions pointing toward vastly strengthened UN machinery that merit careful scrutiny.⁵

Over the years both governmental and nongovernmental actors have been concerned with UN reform. At the governmental level two groups have been prominent. The Group of 18 High-Level Inter-governmental experts was established in 1985 by the General-Assembly under Japanese impetus. The Group of 18 met in four sessions, from February to August 1986, for a total period of eight weeks and submitted its report and recommendations in August.⁶ It admitted to the fact that the time constraints under which it had to work did not allow for a comprehensive study of some of the extremely complex problems put before it.⁷ This group was charged with making recommendations to streamline UN structure, with special attention to economic and social activities. Although given a deliberately limited mandate, the group produced seventy-one recommendations for improving the efficiency of the administrative and financial functions of the United Nations.

5. "Preventive Diplomacy, Peacemaking and Peace-keeping : Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992", UN document A/47/277, S/24III, June 17, 1992.

6. GAOR, Forty-first Session, Supplement no. 49 (A/41/49) 1986.

7. Ibid., para 11. Also see, Report of the Fifth Committee, Forty-first Session, agenda item 38, UN document A/41/795, 5 November 1988 Paras 2-13.

In 1988, the undersecretaries-general for development cooperation from Denmark, Finland, Iceland, Norway, and Sweden launched a three-years effort leading to proposals for U.N. reform. Focusing on problems of coordination and financing the Nordic UN Project resulted in specific proposals for structural change.

Two non-governmental initiatives have also been instrumental in pushing UN reform process. The United Nations Association of the United States of America (UNA/USA), representing 30,000 citizens organized in 165 Chapters along with a 130 member council of organizations, sponsored a panel to study UN management and decision-making. The panel's recommendations, published as 'A Successor Vision in 1988, provides a comprehensive assessment of the UN and proposals for reforms.'⁸ In September 1992, the Ford Foundation, at the request of the Secretary-General, established an independent advisory group, chaired by Shijuro Ogata of Japan and Paul Volekar of the United States. The group's recommendations have been the key in rethinking reform of the UN's financial base.⁹

From within the UN Secretariat there has been a concerted effort toward reforming the system, most notably from Secretary-General Boutros-Ghali. His pathbreaking 'An Agenda for Peace' (1992) has provided the framework for much of the post-cold war debate on reform to meet the security needs. 'An Agenda for Development' (1994), though less pathbreaking, has begun to shape debate on reform in the economic area.

The need for a revision of the Charter of the United Nations

8. See, United Nations Management and Decision Making Project, A Successor Vision : The United Nations of Tomorrow, UNA/USA, 1987.

9. Karen A Mingst and Margaret P. Karns, "The United Nation in the Post-Cold War Era," westview press Inc. A Division of Harper Collins Publishers, Inc. U.S.A., 1995, p. 140.

after an objective appraisal of the Organisations in the light of the changes which have taken place in various spheres of human history since June 26, 1945 is self-evident. In today's world not only military might but also economic advancement, scientific and technological progress and higher cultural standards have come to play an important role in the maintenance of international peace. No doubt arrangements for security, especially fail-safe methods against a war by miscalculation and measures against limited wars, have assumed an importance of their own. The Charter should provide a suitable place under the sun for those nations which are powerful in non-military fields in order to enable them to make their due contribution to the maintenance of world peace and progress, if not so much to international security.¹⁰

Some of the urgent necessities of the present which warrant a restructuring of the Charter of the UN are :

1. Nations of Europe and Japan which were physically annihilated and economically wiped out have regained their economic vitality and have emerged as political powers of the world in terms of importance.

2. New nations have emerged on the world stage. These nations, which were once known as dependencies, colonies, etc. have established an identity of their own in the comity of nations and they are no longer dependent upon their erstwhile mother countries for their security and well-being.

3. The pattern of power relationships among Super or Big Powers has undergone a metamorphic change in as much as :

- (a) The Soviet Union had come up as an equal power along

10. Rai Singh, "A Historical Perspectives For Change in United Nations," in *India Quarterly, A Journal of International Affairs*, Vol. LI Nos. 2, and 3, Published by Indian Council of World Affairs, Sapru House, New Delhi, April-September 1995, P. 14.

with the USA by expanding its military power, especially in strategic weapons system, on a global scale. This shift in military equation had brought about a new change in the field of diplomacy among Super Powers, though Russia, as a successor state of the USSR, is now not so powerful.

(b) By developing nuclear weapons and the delivery system of her own, China has made her debut as a Major if not a Super Power. this fact was recognised by the United Nations in 1971 when the People's Republic of China was inducted as a Member of the UN with an overwhelming majority vote.

(c) The American effort to normalise her relations with the People's Republic of China have set in motion a new chain of events which has consigned the era of cold war to the limbo of history.

4. The monolithic nature of communist leadership has been transformed since 1945 when Stalin last met the Big Power leaders at Yalta. New competing centers of doctrine and power have come into being in the communist world. The polycentrism of the communist world requires a review of the Charter.

5. The rigid bi-polar political world of 1940's, 50's and 60's has yielded place to the fluidity of new era of multilateral diplomacy. The heterogeneous nature of world political stage is reflected in the increase in the UN membership from 51 to 191. This rapid increase in the members of the world community of nations has given rise to new problems.

6. The old enmities of World War II are dead. References in the Charter of the UN to terms like ex-enemy States are anachronistic.

7. Some of the Asian States are stronger. They are able and are determined to play a larger role in shaping the international structure of their region.

8. The Asian States, by themselves or by Joining with others in regional arrangements, are becoming more self-reliant and therefore, more influential.

9. Africa is a continual experiment in nation building. The excitement and enthusiasm of national birth have phased into the more sober period of growth. Nationalism and tribalism have to be channeled into a constructive medium so that international peace and security are not threatened.

10. Threats of new massive military invasions have almost vanished but a subtle mixture of military, political, ethnic, psychological and economic pressures, have been sponsored as wars of national liberation, which require means more than mere conventional military devices and otherwise.

11. In the world of today where independent states and interdependent economies have come to stay, mutual collaboration in economic sphere has acquired a new dimension in context of international peace and security. Not only an adequate growth in the supply of international money for adjusting payments imbalances without foreign exchange crises resulting in the impairment of the ability of individual nations to pursue their own monetary policies, but also development and humanitarian assistance have come to acquire importance which can help in maintaining world peace and security ; hence there is greater need today to coordinate and correlate the efforts of nations and the inter-governmental agencies as well by the United Nations with a view to ensuring as far as possible an even economic and social progress among the developing nations.

12. Perhaps, more important than 'aid' is 'trade' especially for the developing countries. changed world conditions have prompted new approaches to problems of foreign trade and commerce, but most of the changes so far brought about have centered to individual gains and progress in international negotiations on non-tariff barriers and impediments to agricultural trade still remain inconclusive and to some extent unsatisfactory. It is time international economic policy begins at home, but the UN Charter should have some provisions to effectively improve the means by which national economies can adjust to each other in a world of increased economic interdependence.

13. In the sphere of US-World relationship various international incidents and episodes have demonstrated that neither of the Big Powers want a nuclear confrontation ; on the contrary, there is a desire to reduce the burden of armaments to meet the problems created by creative economic and social change both at home and abroad. This is despite the fact that both these powers are engaged in strategic and military competition and approach negotiations with differing premises. The new American-Russian relationship is likely to be helpful in revising the Charter of the United Nations.

14. There is a general consensus among nations that progress in negotiations in the control of armaments will bring about a greater measure of security than can be obtained from arms alone. Though the problems of arm control is not new, a new approach to the old problem is needed. Preventing the spread of nuclear weapons, curbing biological and chemical threats, strategic arms limitations, mutual and balanced force reductions, etc. are all problems connected with disarmament and arms control, on which negotiations are afloat and some agreements have also been signed, but the general review of the Charter should take note of

the new consensus which has emerged and made adequate provisions to translate it into reality.

15. Most of the nations of the world wish to strengthen the peace keeping capacities of the United Nations, but do not seem to agree how to go about it. Some countries have even failed to pay their share of the peace-keeping efforts of the United Nations in Congo and elsewhere, resulting in a large financial deficit in the UN budget. Not only has the financial problem to be solved on a permanent footing, but the machinery for peace-keeping by the UN requires clear guidelines and more practical means. The charter should define the ground rules for peace-keeping operations and the role of the Secretary-General, specially in regard to the peace-keeping efforts of the UN should be spelt out more clearly.

16. Most of the new countries have been admitted to the UN and others awaiting admission have already acquired some experience of the work in UN through sheer observation. The general feeling among the member nations is that the members should foreswear unrealistic rhetoric and concentrate on using the UN constructively to settle rather than publicize disputes. The United Nations should not be the forum where differences are exacerbated by intemperate advocacy.

17. Epoch-making developments in science and technology have brought about new challenges of exploring new frontiers of space and sea and the dangers of polluting the planet. These developments have encouraged feelings of interdependence but institutional guidance for international cooperation, specially under the UN act is has not crystalised as yet, mainly due to the inflexibility of the Charter, which at time of its conception or birth did not foresee these developments in science and technology.

18. No nation can keep its pollution to itself. Wastes discharged into the air and water befoul a common resource. Restraints on the part of individual member and non-member states to abide by a code of conduct to be evolved through an international approach to the problem should be laid down with adequate safeguards, means, and penalties for defaulters, so that further environmental determination is arrested and necessary repair to the damage already done is carried out.

19. The urgent necessity of economic exploration of the mineral and biological resources of the oceans, including the riches of the world's sea-beds has been accepted by the nations, big and small. The Charter of the UN has to make note of this desire and if possible evolve a law governing the peaceful exploration and exploitation of seas and their natural resources.

20. Space has come to be recognised as the new frontier of man and everyone is agreed that space is open to all and no one nations should impede the progress of the other in the exploration of space. But this calls for international scientific and technological cooperation which the United Nations alone can provide. Already broad international cooperation has been secured through bilateral agreements on minor problems, but the major questions regarding space explorations remain to be solved through multilateral and joint efforts. The Charter should reflect and if possible evolve the law governing exploration and utilisation of space for peaceful uses.

21. The concept of wars of national liberation seemed to have gained a degree of respectability. For the UN, it means situation of civil war, subversion, guerilla warfare and aggression by proxy, which might escalate into an open confrontation between Big proxy. It also means possible expenditure on peace-keeping operations which have already landed the Organisation into

financial difficulties. It also means a fresh look at the role of regional organisation in the maintenances of international peace and security. By and large most of the nations of the world have come to accept the view that good results may emerge from a mutual study and consultations on the scope and limitations of the Charter. The Charter Review Conference for consideration of proposals for revision by the General Assembly may lead to a broadening of consensus which was achieved at the San Francisco Conference in 1945. New comparisons between the objectives laid down in the Charter and available powers and machinery for their fulfillment warrant a revision of the Charter. Not only the mistakes and shortcomings of the past, but the necessities of the present demand a revision of the Charter of the United Nations.

The assumption that underpins some of the UN reform debate is that the UN Charter is inadequate and so needs updating. But it could also be said that the UN Charter itself is a great deal better than may be implied from the current debate, and that the real issue is that governments should do more to honour their existing obligations under the current document rather than speculate on the need for amending it.¹¹

On July 16, 1997, Kofi Annan, the Secretary General of the United Nations presented with a lot of fanfare proposals "for the most extensive and far-reaching reform of the United Nations since it was founded 52 years ago," as the Secretary-General himself described the proposals. He pledged a "quiet revolution in the United Nations" in time for the twenty-first century. The speech was televised "live" over the BBC, CNN, and other channels. The 'bold' (the term used by Annan himself) proposal is completely

11. Keith Suter, "Reforming the United Nations", in Ramesh Thakur, ed., *Past Imperfect, Future UN certain : The United Nations at Fifty*, "Macmillan Press Ltd., London, 1998, P. 189.

silent on the most contentious issue of the system of reforming the 'veto system' in voting which arbitrarily gives the right to only five nations out of the then total membership of 185 singly to stall even the unanimous decision of the other members. The Secretary-General in that speech dealt with the other main problem facing the organisation in the 52nd year of its existence widespread non-fulfillment of the financial obligations the worst offender being the Government of the United States of America. As in the wider economic field, in the United-Nations also the USA is the largest debtor. The non-payment of its dues has virtually paralysed the United Nations.¹²

In order to attain the goals described above and to meet new challenges, it is necessary to undertake several reforms in the United Nations. Much of the necessary reforms of the United Nations system can be effected without amending the Charter, provided governments are willing. But some Charter amendments are necessary for better global governance. While the reform of the Security Council will be the major focus of such efforts, it is important to bear in mind that the United Nations is an organization that can also undertake cultural and economic remedies. The following are some of my ideas for strengthening the United Nations in order to meet the new and diverse challenges that will have to be met in the coming years.

Case for Charter Review :

The Charter of the United Nations embodies specific provisions to amend and revise the Charter. Chapter XVIII of the Charter lays down two different amendment procedures ordinary and extra-ordinary. The ordinary procedure is provided for in Article 108, which lays down : "Amendments to the present Charter shall

12. Subhash Chandra Sarker, "Reform" of the United Nations-I", Mainstream, September 27, 1997, P. 4.

come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council."

Article 109 provides for the extra-ordinary procedure which prescribes:"

1. A General Conference of the members of the United Nations for the purpose of revising the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations, including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

There is common thinking by all state members of the UN that the Charter should be more effective in the attainment of its objectives. For this purpose the Charter, written 57 years ago needs a review in the light of a more than half century of experience and of the anticipated needs of the 21st Century.

Too many amendments may not be necessary but some are absolutely and immediately needed. These are, *firstly*, restructuring and expansion of the Security Council and *secondly*, conceptual reorientation so as to make the UN more focused and purposeful and responsive on a priority basis to the world's most pressing problems such as population explosion, degradation of environment and elimination of poverty, ignorance and disease and disarmament.

No amendment of the Charter can be made except with the concurrence of all the present five permanent members of Security Council as well as two-thirds of the members of the General Assembly as well as ratification by them. To satisfy these two conditions there has to be a meeting of minds and a consensus between the permanent members and the generality of the membership of the UN.

Restructuring of the Security Council :

With the end of the Cold War, the Security Council has acquired, to a considerable extent, the role which was envisaged for it by the architects of the Charter. Over the last few years, the exclusive informal meetings of the five permanent members to work out a line of policy of unanimous concurrence, considered essential for any decision by the Council, have become more frequent.¹³ However, even since the number of elected members was raised to 10 in 1966, unanimity constitutes for the five, four affirmative votes for a decision as compared to two in the original arrangement.¹⁴

13. Shambhavi Vedantam, "United Nations, Putting Words to Work", Vikas Publishing House, Pvt. Ltd., New Delhi, 1996, P 213.

14. K.P. Saxena, "Reforming the United Nations : The Challenge of Relevance," Sage Publications India Pvt. Ltd., New Delhi, 1993, P. 181.

The question of revising the membership of the Security Council, gained momentum again in the last few years. Many UN members now numbering 191 have expressed the view that the Security Council be reshaped to reflect today's world. The question acquired an urgency even since the Security Council, beginning in August 1990, increasingly resorted to the enforcement measures of Chapter VII of the Charter. The former Secretary-General Perez de Cuellar aptly noted that action in this specific field of activity should not only be just but should also be seen as such. He emphasized that agreement among the Council's permanent members must carry with it the willing support of the majority of nations.¹⁵

The existing pattern of representation in the Security Council has become extremely lopsided in view of the radical political changes and the coming together of the Eastern and Western parts of Europe. Thus the Europeans and others now have seven seats, four permanent and three nonpermanent. The Third World Countries, pressing for an equal representation, are seeking a further expansion of Security Council membership on the basis of an equitable geographical distribution of seats. Furthermore, both Japan and Germany, who are now among the top four contributors to the UN budget, would like to find a place among the permanent members of the Council. Japan currently contributes more than 12 per cent of the budget. Germany's annual assessed contribution to the United Nations, as of now, is considerably larger than either that of France or Britain. The question is what the criteria for permanent membership should be, whether it should be on the basis of economic power or size of population. There is also a strong view that India, Brazil, and Nigeria, by virtue of being the largest countries of their respective

15. UN Chronicle, December 1991, P. 43.

regions, should become permanent members. This proposal, which seem plausible, would mean adding five new permanent members-Japan, Germany, Brazil, India and Nigeria. Unlike the present members however, no new member is to possess the 'veto power'. On the Question of 'veto power', although UK and France showed their support to Germany and Japan for the veto powers, yet many countries propounded that there should not be any more expansion of the scope of the 'veto power', for it would make all the more difficult for the Security Council to make decisions. The US and UK have not yet taken position on the issue.¹⁶ In my view the principle of fair geographic distribution should first be taken into account and also the interest of developing countries, while considering the increase of 'veto power.' If the proposal is accepted there would be three categories of members. Five veto-wielding permanent members ; five permanent members without veto ; and a number of elected non-permanent members.

It is obvious that whatever the nature of reforms and reshaping of the membership of the Security-Council are to be, opposition will come from those affected. While there have been mostly informal proposals and ideas floating around, Italy took the initiative in making a formal move in October 1991. The General Assembly, at its forty-sixth session, had as its agenda on item initiated by the non-aligned countries including India way back in 1979-entitled "the question of equitable representation of and increase in the membership of the Security Council." No formal discussion took place at that session however, but the General Assembly decided (Decision No. 46/418, 11 December

16. Professor Liu Wenzhong, "The Issue of Veto Power in the Security Council Viewed from the Reform of the United Nations", in International Strategic Studies, No. 2, Serial No. 36, Published by China Institute for International Strategic Studies, June 1995, PP. 20- 21.

1991) to defer consideration of the item and to include it in the provisional agenda of its forty-seventh session.

India has been in the forefront of the demand for UN reforms to make it more effective. India stressed that the future of mankind cannot be decided in few capitals of the world. India would be in the running of the permanent membership of the Security Council in case there is any restructuring of it.¹⁷ Though United States initially opposed the permanent status for India, which was among the founding members of the United Nations and which has been also a founding members of the League of Nations in 1919 and which has an unbroken record of membership of major international organisations for peace Since 1919.¹⁸ India in any case has a legitimate claim by virtue of its size, geopolitical significance, peace-keeping role in Korea, Congo, India-China as Chairman of International Commissions created in the Geneva Accord in 1954, Cambodia, Somalia, Angola, Namibia etc. and contribution to the peace, besides its economic size strength, it has staked a claim to permanent seat. Several states have come over in the open to support it, but several powerful states give lukewarm support. For India, it would not be easy to get instant entry into the club of mighty.

Bearing in mind the various points being made about reform of the Security Council, and the purposes and principles of the UN Charter, the following criteria are suggested which inter-alia should govern any attempt to restructure the Security Council.

- (i) The size of the Security Council, inclusive of both permanent and non-permanent members, should bear

17. Saroj Kumar Patnaik, "United Nations : A Viable Instrument for World Peace", in Third concept, An International Journal of Ideas, February 1993, P. 43.

18. Subhas Chandra Sarkar, "Reform" of the United Nations-II in Mainstream, October 4, 1997, P. 26.

some realistic proportion to the total membership of the United Nations, so that all major countries and regions are represented on it at a given time. (It is suggested that there should be a total of 20 members, with 10 each in permanent and non-permanent categories. This would be close to the ratios existing in 1945.)

- (ii) The permanent membership of Security Council should be conferred on those who possess not only a very high military capability, but also a very high economic capability, large population, a significant regional status, a proven record of adherence to purposes and principles of the UN Charter, and fulfillment of their financial obligations to the United Nations. (It is suggested that the following countries may be considered for addition to permanent membership : Japan, Germany, India, Brazil, Nigeria and Indonesia.)
- (iii) In order to keep the number of permanent members within reasonable limit, permanent membership may be rotated among some members belonging to the some region, particularly if the region has evolved broadly uniform attitudes on global issues.
- (iv) The 'veto power' given to the permanent members should be seriously reviewed. If this privilege of the permanent members must be retained for some time more, its applicability must be restricted to fewer issues, particularly excluding those in which a member is an involved party. The new members which may be added to the permanent category may either be denied the 'veto power' or given this power on a rotational basis.
- (v) The jurisdiction of the Security Council must be widened to include all matters posing a threat to international

security, including those in the non-military field such as poverty, disease, drought, famine, oppression, and environmental disasters.

As with most UN reforms, only a basic change in attitude by member states can turn the Security Council from a "debating society" into a "keeper of the peace". Yet procedural changes could improve the situation. All requests for the Security Council to consider alleged threats to international peace and security, for example, could be debated in open session with the principle parties present. Currently, this takes place in "informal consultation" which are closed to all but Council members. Once the requests for Security Council consideration are made, they should then be voted on, with all Council members required to vote 'yes' or 'no' for the public record. These changes would at least spotlight the actions of all of the Council members and might limit the irresponsible behaviour of those with some sensitivity to would public opinion. another useful change would be a required that when the petition for Council action is filed, it be accompanied by a draft resolution clearly defining the "imminent threat to peace and describing the specific Council action sought. This might reduce idle, protracted talk and focus instead on the UN's realistic capabilities.¹⁹

The General Assembly :

The General Assembly is the most visible symbol of the United Nations in disarray. The UN's founders envisioned the Assembly as a dignified forum for exchange of views between sovereign nations whose resolutions might embody the moral authority of "international public opinion". In dismissal contrast to this dream,

19. Joachim Muller, ed. : "Reforming the United Nations : New Initiatives and Past efforts", Kluwer Law International, London, Vol. II, 1997 PP. III 14/17-14/18.

the Assembly today reflects mainly the excesses of bloc politics. It is now a forum in which a numerical majority of member states dictate a highly selective agenda and pass meaningless resolutions which have little if any moral weight. Furthermore, the overwhelming numerical majority possessed by the nations of the nonaligned movement has led to the adoption of a strictly limited perpetual agenda, which only further undermines the Assembly's credibility.

The General Assembly should be revitalized as a universal forum. Regular theme session, effective exercise of budgetary authority, and the streamlining of its agenda and procedure should be part of the process of revitalization.²⁰

In addition to it, some General Assembly procedures should also be changed. Among them :

- (i) The General Assembly Plenary Session should be shortened from its current three months to six weeks or less. Strict limits should be placed on the length of speeches and resolutions, the amount of documentation and the allotted time for debates.
- (ii) For the purpose of efficiency and conciseness, resolutions dealing with slightly different aspects of the same topic should be collapsed into a single resolution while resolution passed by Economic and Social Council should be ruled definitive, requiring only notation of the General Assembly.
- (iii) The rights of the minority on a given question in the General Assembly should be better protected. Not only would this be fair, it also could give countries frequently

20. A Call to Action, Summary of our Global Neighbourhood, the report of the Commission on Global Governance, Published in Geneva by the Commission on Global Governance, 1995, P. 15.

in the minority more incentive to participate in the Assembly's proceedings. One potential change would be to curtail nations' right to amend draft resolutions, so resolutions offered by any state can at least be fairly considered.

- (iv) The separation of function between the Security Council and the General Assembly under Article 12 of the Charter should be reinstated by not allowing any discussion in the General Assembly of matters pending before the Security Council.

Secretariat and Secretary General :

In some respects a more crucial structural change concerns the relationship between the secretariat and the various specialised agencies. An interesting suggestion is for the Secretary-General to delegate sectorial responsibilities to newly-created deputies who would together form a cohesive 'cabinet' type of team. Only then can the Secretary-General remain the focal point of coordination in an integrated UN.²¹ It is easy enough to say that UN system needs strong, imaginative and independent leadership. The reality is much more complex. On the whole each incumbent's role both as head of the administration and a catalyst and moderator in conflict situations have won high praise. To enable him to play a much more effective role in the future, it is proposed here that the UN Secretary-General should hold office for a single-seven year single term, instead of five years and a non-political committee should undertake the task of appointing a competent executive,

21. Ramesh Thakur, "From Collective to Cooperative Security ? The Gareth Evans Vision of the United Nations", in Stephanie Lawson, ed. "The New Agenda for Global Security : Cooperating for peace and beyond", Allen and Unwin Australia Pvt. Ltd., Australia, 1995, PP. 32-33.

irrespective of nationality and professional background. The procedure could also be exempted from the veto political calculation ought not dominate the process of selecting someone for the only truly world representative office.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) :

For almost half a century UNESCO has been seeking to contribute to peace through its effort in educational, scientific and cultural fields. today, it must also tackle new issues that have emerged with the end of the cold war, such as disputes between different ethnic and cultural groups. As Samuel Huntigton indicated in his article. "The Clash of Civilizations ?" There may be an increase in international conflicts resulting, for example, from cultural and religious rivalries.²² As part of the effort of the international community to prevent the eruption of such clashes, it is important to promote greater understanding among the world's different cultures. This is a new agenda with which UNESCO must be engaged.

Through its, culture of peace program, UNESCO is seeking to respond to the evolving global situation by contributing to conflict prevention and post-conflict peace-building efforts within its areas of competence. The activities it plans to undertake in El Salvador for disseminating a concept of peace based on humanitarian values are part of this programme.²³

UNESCO's twenty-sixth General Conference in 1991 was one of its most remarkable meetings in recent years, since it ratified

22. Samuel Huntigton, "The Clash of Civilization ? " In Foreign Affairs, Vol. 72, No. 3. Summer 1993, PP. 22-49.

23. Koji Kakizawa, "Planning for the Twenty-first Century : A Personal View of Possible United Nations Reforms", in Japan Review of International Affairs, Vol. 8, No. 1, Published by the Japan Institute of International affairs, Winter 1994, P-270.

an important amendment to its constitution in an effort to enhance the effectiveness of the functioning of its governing body. As a result, membership on the executive board is no longer a matter of individuals but rather of member states. The discussions on the amendment gave member states an opportunity to reconsider the ways in which the organization conducts its activities, as well as the objectives it is pursuing. One can hope that the new, restructured executive boards will fulfill its role as a governing body, addressing more effectively the complex global problems of today's world.

The Economic and Social Council (ECOSOC) :

ECOSOC has 54 member countries elected for three-years terms. ECOSOC initiates reports and makes recommendations to the General Assembly, UN member nations and specialised agencies on economic, social and cultural matters. There are 16 autonomous specialised agencies, such as the UN Development Programme (UNDP) and World Health Organisation (WHO). There are also the big financial agencies of the World Bank and the International Monetary Fund (IMF). Additionally, there are subsidiary bodies such as the UN Fund for Children (UNICEF) and the UN Environment Programme (UNEP).

Economic and Social issues have been growing steadily in importance since the end of the Cold War, and the United Nations will be expected to deal with these issues more effectively. Toward this end it would be useful to revitalize ECOSOC so that it will (i) be better able to bring to the world's attention various economic, social and development issues and (ii) achieve better coordination among the various agencies, programs, and funds that come under the Council's jurisdiction. In this context, the resolution adopted by consensus at the forty-eight General Assembly, entitled Further Measures for the Restructuring and Revitalization of the United

Nations in the Economic, Social and Related Fields," needs to be implemented.

The Trusteeship Council :

The Allied Powers at the end of World War I decided that they would not as was usual for military victors-divide up the territory of the vanquished between themselves as a reward for winning the war. Instead, it was agreed that the colonies would become mandates, to be put on the road to independence. The policy was continued after World War II, with the mandates becoming trust territories. Each territory was looked after by a country which was a member of the League/UN, and that country reported to the League/UN on the progress made in preparing the territory for independence.

As all of the Trust Territories are now independent, the Trusteeship Council has effectively worked itself out of a Job. But it cannot be abolished because that would require an amendment to the UN Charter. The Council structure could be retained, with its focus now as either on Environmental Council or as a Council for the World's approximately more than 300 million indigenous peoples.

The International Court of Justice :

The International Court of Justice (ICJ) is the world's main legal body. But attendance at it is not compulsory. Only about a third of the UN's membership accept its jurisdiction. The ICJ, as the principal judicial organ of the United Nations, continues to occupy a place of vital importance in the peaceful settlement of international disputes and in the maintenance of the rule of law in the international community. The number of contentions cases submitted by states to the International Court of Justice has

increased dramatically in recent years, demonstrating that the role of ICJ is expected to play in facilitating the peaceful settlement of international legal disputes is becoming increasingly important.

The global neighbourhood of the future must be characterized by law and the reality that all, including the weakest, are equal under the law and none, including the strongest, is above it. Our recommendations are directed to strengthening international law and the International Court of Justice in particular.

All member-states of the UN that have not already done so should accept the compulsory jurisdiction of the Court. The Court's chamber procedure should be modified to enhance units appeal to states and to avoid damage to the Court's integrity. Judges should be appointed for one ten-years term only, and a system introduced to screen potential members for jurisprudential skills and objectivity. The UN Secretary-General should have the right to refer legal aspects of international issues to the Court for advice, particularly in the early stages of disputes. The Security Council should appoint a distinguished lawyers to provide advice at all relevant stages on the international legal aspects of issue before it. It should also make greater use of the World Court as a source of advisory opinions, to avoid being itself the judge of international law in particular cases. The World Court should be given unambiguous and wide-ranging powers to scrutinise the passing and implementation of Security Council resolutions. No powerful state should be able to Secure Council notes through bribery and threat. No state should be above the law. This means that Article 94(2) should be reformed to abolish the primacy of the Security Council in deciding how to give effect to Court judgments.²⁴

24. Geoff Simons, "U.N. Malaise : Power, Problems and Realpolitik", Macmillan Press Ltd., London, 1995, P. 261.

Financial position of the United Nations :

Like all other international institutions, the United Nations depends upon adequate and timely flow of resources to its coffers for its survival. No discussion on the reform of the United Nations will be meaningful, unless it is possible to mobilise adequate resources for the functions of the reformed United Nations. Financing is therefore at the very core of the struggle for the future of the United Nations. The United Nations find itself in the present financial straitjacket partly because of the accumulation of huge arrears of payment, and also because of late payments by most of the Member States, and the insistence of the major contributors on zero growth budget for all the organizations of the United Nations system.

The three main categories of the financial resources of the UN are :

- (i) The income from revenue-producing activities (visitor's programmes, sale of UN documents, etc.) and staff assessment.
- (ii) Voluntary contribution which are given either to trust funds such as the the UNICEF or channelled to the UN through the UNDP. This category of resources does not form part of the regular budget.
- (iii) The assessed contribution to the UN budget. The scale of assessment is calculated by a format that takes into account the absolute level as well as the per capita national income of each member-state. The contribution of each member-state is fixed by the General Assembly on the advice of an eighteen-member committee on contribution.

The extraordinary expansion of the budgets of the UN systems based on voluntary contributions and the proliferation of funds financed by each contributors, has had very adverse consequences for the UN system :

Firstly, it distorts the development priorities of the recipient governments, and even those laid down by intergovernmental bodies. It has also led to frequent shifts in priorities depending upon the priorities prevalent in donor countries and the ideas emanating from the think tanks in these countries.

Secondly, the voluntary basis of financing UN activities has introduced uncertainty and unpredictability in UN development assistance programmes. It has also made it very difficult to plan for the future on assured basis.

Thirdly, voluntary funding has given tremendous fillip to conditionalities. Conditionalities are imposed not only for determining priorities, but also for getting the maximum out of the voluntary contributions made in terms of export of personnel and equipment.

Fourthly, voluntary funding has undermined the democratic process of decision making in the United Nations. The major donor countries, by virtue of their larger contributions, exercise dominant influence over this process.

Fifthly, voluntary funding has been an important factor introducing donor recipient relationship in the United Nations. In the regular budget, there is no donor and no recipient. Every member country pays according to its capacity to pay, based on a formula uniformly applicable to all. But in voluntary funding some contribute more and some contribute less. This donor recipient syndrome has resulted in the dilution of the basic UN principle of "the sovereign equality of all its members". It has also lowered the very quality of relations among nations.

Sixthly, the rapid increase in the component of the UN budget financed through voluntary contributions has been a major factor preventing the desired growth in the regular budgets of the UN Organisation. This phenomenon has had the effect of diluting the concept of financing the United Nations as a matter of treaty of obligation.

Finally, when the United Nations resorted to voluntary contributions for financing its activities, the expectation was that this will help in mobilizing additional resources for the United Nations. But things have not worked out that way. It is a matter of speculation whether in the absence of voluntary contributions, the United Nations would have been able to raise the present level of its budgetary resources from assessments from member states.

In view of the chronic nature of the resources constraint of the United Nations and the uncertainty surrounding the availability of resources, suggestions have been made from time to time to tap autonomous and predictable sources of financing. The person who carried out a veritable campaign for several years for raising such resources for the United Nations was Professor Jan Timbergen, the first Nobel Laureate in Economics and the Chairman of the UN Committee for Development Planning for the best part of the late sixties and early seventies. His favourite scheme was international taxation on the consumption of luxury goods. In 1980, in a conference in Bubrovnik, he presented a paper giving the economic rationale for instituting a system of international taxation to raise resources for multilateral organizations.

The proposals advanced for raising new resources for the United Nations on a stable and assured basis are either in the form of international taxation or incomes derived from the global

commons like the sea, space, biosphere etc. Some of the proposals, if implemented, would, apart from raising income for UN organizations, have other important positive effects-like putting a measure of restraint on the exploitation of natural resources, moderating large scale currency speculations as in the case of the Tobin Tax, discouraging arms transfer etc. The following is a brief listing of some of the major proposals :

a. Tobin Tax—Explaining his proposals for a tax on currency speculation, Prof. Tobin has stated that the capital flows needed to achieve an efficient allocation of world savings are today a minuscule fraction of the world wide transactions in currency markets (1 trillion per day). The bulk of these transactions are speculations and arbitrates, seeking to make quick money on exchange rate fluctuations. They contribute little to rational long term investment allocations. An irrevocably unique world currency which can escape such a turbulence is decades away. So the second best solution is to tax speculations based on fluctuations in currency exchange rates. The revenue potential is \$ 1.5 trillion per year for a 0.5 percent tax. The proceeds should be devoted to international purpose and be placed at the disposal of international institutions. A 0.5 per cent tax is equivalent to a 4 percent difference in annual interest rates on three-month annual interest rates on three-month bills, 'a considerable deterrence to persons contemplating a quick round trip to another currency. It will, however, be too small to deter commodity trade or serious international movements.

b. A tax on the international sale of designated weapons.

c. Pollution tax—A global carbon tax or tax on sales of fossil fuels. It is estimated that a \$ 5 per barrel tax on oil would yield \$ 100 bn. per year.

d. Travel tax—Agreement on such a tax could be reached in the International Civil Aviation Organization (ICAO). This could take the form of a flat tax on all air travellers in selected sectors. The justification would be that air travel depends on international regulations, as well as peace and stability, which the UN is supposed to ensure. It has been estimated that a flat charge of \$ 5 per passenger covering 300 million travellers every year will fetch \$ 1.5 bn. annually.

e. Making available a part of the proceeds derived from the mining of the seabed.

f. A tax on international trade.

g. A tax for parking geo-stationary satellites.

h. A tax for using the electromagnet spectrum.

i. Charges on marine ocean transport.

j. Charges for fishing rights in the high seas.

k. Charges on maritime dumping of wastes.

l. Making available to the United Nations the proceeds from one day's sale of stamps by the world's post offices every year.

m. A tax on the day's telecommunications every year.

Many of these proposals are viable and workable. What is lacking is the political will of the member states to reach an agreement on one or more of these proposals and implement them. Until now, the governments of the major developed countries are not prepared to accept any of these proposals, because the main burden of payment will fall on them, and also because they do not want the United Nations to be an autonomous and stable source of financing its activities. In their bid to continue to exercise control over the organisation, they want it to go on living from hand to mouth. Therefore, prospects for improving the financial

position of the United Nations in the near future do not appear to be promising. Nevertheless, the following suggestions are made for overcoming the present financial crisis of the United Nations.

(a) The problem of late payments and arrears :

- (i) Interest should be charged on late payments by member states, except the low income countries facing genuine difficulties in making payments.
- (ii) arrears due from this group of countries should be liquidated by one-time proportional increase in the assessments of the other Member states.
- (iii) The problem of deliberate defaulting cannot be ignored. The World Court should be moved to pronounce on the illegality or otherwise, in terms of Article 19 of the Charter, of deliberate non-payment of dues and on the sanctions that can be applied against the defaulting state under the Charter.

(b) Concentration of assessed contribution :

The present excessively high ceiling (25 per cent) of contribution by any single member state should be reduced to not more than 10 to 12.5 per cent. Other member states, particularly the middle economic powers which will include several developing countries, should be prepared to increase their own contributions to components for the loss of revenues on account of the lowering of the ceiling.

(c) Assessed contributions :

- (i) The primacy of the regular budgets of the organization of the UN system should be reaffirmed. these organizations should rely mainly on their regular budgets for financing their activities. All the operational and administrative

costs of the organizations should be financed from their regular budgets.

- (ii) All peace-keeping operations should continue to be financed on the basis of special assessments.

(d) Voluntary contributions :

- (i) Urgent and decisive steps should be taken towards reversing the growing dependence of the United Nations on extra-budgetary sources of financing. The system of voluntary funding should be phased-out within a time-bound framework.
- (ii) As an interim measure, all administrative and management costs of operating UN's development assistance programmes should be moved to financing by assessment.
- (iii) As a part of phasing-out, a minimum of 25 per cent of the total budget for operational activities should be moved to the assessed portion of the overall budget.

(e) New autonomous sources of financing :

An expert group should examine the various proposals for providing to the United Nations access to autonomous sources of financing and recommend the most equitable, feasible and desirable proposals in order of inter se preference. The group should also work out in detail the modalities of implementing the recommended proposals. Negotiations should commence on reaching an agreement on one or more of these proposals, immediately after the completion of the work of the expert group.

(f) Resources for Peace-keeping :

- (i) Arrears on peace-keeping assessments should be cleared on an urgent basis :

(ii) Decisions should be taken urgently on the various proposals made by the Secretary General in his report Agenda for peace for resolving the present difficulties in financing the peace-keeping operations of the United Nations.

(iii) In particular, his proposal to establish a reserve fund for pre-assessment start-up of peace-keeping operations should be accepted and urgently acted upon.

(g) Currency of payment of financial contributions to the United Nations :

All transactions of the UN system, either from the assessed or voluntary contributions, should be carried out, not in dollars as at present, but in Special Drawing Rights or any other unit of account based on a basket of currencies.

A Standing U.N. Force :

Former United States President Ronald Reagan, in a speech endorsing the idea of a standing U.N. Force, stated, "What I propose.....is nothing less than a human velvet glove backed by a steel fist of military force."²⁵ Though controversial, support for a U.N. military has grown rapidly since the release of the U.N. Secretary-General's report to the Security Council, 'An Agenda for Peace'. Responding to the Council's request for a proposal to strengthen the U.N.'s ability to resolve world conflicts, Boutros-Boutros Ghali argued that his organization needs a military force if it is to maintain international peace and stability. He proposed a plan aimed at establishing a de facto U.N. army, with each member state making available up to 1,000 troops for peace enforcement and deterrent operations. Missions using U.N.

25. The Washington Post, December 5, 1992.

armed forces would be conducted under the authority of the Security Council and at the command of the Secretary-General.²⁶

However for making the U.N. effective the need of creating an international force was being felt and had been the subject of discussion in the U.N. In 1948 the Secretary-General of the U.N. had made a proposal for the individually recruited U.N. Guard for the purpose of maintaining peace and security. But the proposal was rejected by the General Assembly. In 1951-52 the Collective Measures Committee created under the Uniting for Peace Resolution recommended constitution of a combat force on the Korean pattern organized and directed by one or more member states for resisting future aggressions. But the proposal could not be accepted due to opposition of Soviet Bloc to the very legality of the Uniting for Peace Resolution. In 1961 on March 17, the commonwealth Prime Minister's Conference made a proposal emphasizing the need for establishing an international armed military force to prevent aggression and to enforce observance of disarmament agreement. An international authority in association with U.N. should be created to control this force and to ensure that it is not used for any purpose inconsistent with the Charter. Though this proposal for an international police force is different from U.N. military force yet it is significant so far as it accepts the need of such a force. The need for an international police force was also accepted at the East West Conference held in Warsaw between 3 to 6 Feb., 1961.

At the 1962 U.N. conference on Disarmament held in Geneva the Soviet Union emphasized the need for an international armed force to ensure U.N. capability to effectively protecting states

26. Jeffrey R. Gerlach, "A U.N. Army for the New World Order ?" in *Orbis : A Journal of World Affairs*, Vol. 37, No. 1, Published by Foreign Policy Research Institute/JAI Press Inc. Winter 1993, P. 223.

against threat or breach of the peace. It stressed upon all states to conclude agreement under Art. 43 with the Security Council for the availability of armed force for U.N. action under Art. 42. The armed forces to be made available to the U.N. under the agreement shall form part of the national armed forces of member states stationed within their territories. They shall be kept up to full strength equipped and prepared for combat when required for use under Art. 42. They shall be under the command of the military authorities of the state concerned. However this has not been materialized as the disarmament treaty under which it was to be realized has not yet been created.²⁷

In a New York Times article, Senator David Boren (Democrat of Oklahoma) suggested that 40 to 50 U.N. member nation contribute to a rapid deployment force of 100,000 volunteers. He argued that such a force would help discourage regional conflicts, violations of basic justice, the proliferation of weapons and international terrorism.²⁸ His Senate Colleague, Joseph Biden (Democrat of Delaware) introduced Senate Joint Resolution 325, the "collective security Participation Resolution", that urged "the president to take all appropriate steps to negotiate, under Article 43 of the United Nations Charter, 'a special agreement or agreements' with equitable terms under which designated forces from various countries, including the United States, would be "available to the Security Council.....for the purpose of maintaining international peace and security." Former President Bill Clinton, in a major foreign policy address of his campaign, pledged his support for the creation of a U.N. military force. While Former President George Bush, whose use of the United Nations during

27. DOC ENDC/2, 19 March 1962 Art. 18 ; Conf. the 18 Nation Committee on Disarmament.

28. David Boren, "The World Needs An Army on Call", The New York Times, August 26, 1992.

the Gulf War helped to reinvigorate the Organization, was less enthusiastic about Boutros-Ghali's proposed army.²⁹

Influential members of the media have also supported various versions of the U.N. army. An editorial in the New York Times proclaimed : "With a force capable of responding quickly, the United Nations could save lives, check massive tides of refugees and discourage worlds. In the world, as on a city street, the mere presence of a cop on the beat matters."³⁰ support for a U.N. army has been even stronger within the academic and policy community. Bruce Russett, a political scientist at Yale, and James S. Sutterlin, a fellow at Yale's International Security Program, argue that "the Security Council should be able to mobilize a force to serve under U.N. command for enforcement purposes."³¹ Harvard University's Joseph Nye, Jr., has suggested a rapid deployment force of 60,000 troops built around a professional core of 5,000 U.N. soldiers.³² A blue-ribbon panel covered by the Carnegie Endowment for International Peace concluded that "the United Nations must take steps to prepare better for military enforcement actions. If collective security is to be taken seriously, the U.N. must be prepared, in the end, to use force".³³ Brian Urquhart, Scholar in residence at the Ford Foundation, suggests that, "A third category of international military operation is needed, somewhere between peacekeeping and large-scale enforcement."

29. Jeffrey R. Gerlach, n. 26, op. cit. P 224.

30. Editorial, "The New Blue Army," The New York Times, September 20, 1992.

31. Bruce Russett and James S. Sutterlin, "The UN in a New World Order," Foreign Affairs, Spring 1991, P. 83.

32. Joseph S. Nye, Jr., "What New World Order ?" Foreign Affairs, Spring 1992, P. 93.

33. Carnegie Endowment National Commission on America and the New World, changing our ways America and the New World, Congress Endowment for International Peace, Washington D.C. 1992, P. 67.

Such views are not held by a tiny minority but represent the thinking of many analysts.³⁴

A standing military force with adequate logistical support and under clear UN Command should be established. A better alternative would be to activate Art. 43 of the Charter by working out the details and modalities and logistics of quick deployment of forces earmarked by the governments under Art. 43 of the Charter. The Military Staff Committee should be entrusted to work these out, as indeed, contemplated in that Art. 43 and Art. 47 could be suitably amended, if necessary.

Maintenance of Peace :

The collective security system provided for in Chapter VII of the U.N. Charter did not work because, the war time alliance on which it was predicated broke down after the war was over. It is now being widely assumed by optimists and idealists that after the end of the cold war, it should be possible to make the system work. It is pointed out that "collective action" against Iraq in 1991 in compliance with Security Council Resolution 678 (passed on 29 November 1990), which had invoked Chapter VII, was a major evidence of the post-cold war possibilities. In order, however, to exploit these possibilities to their full extent, it would not be proper to rest on the Iraq experience and do nothing more to strengthen the collective security system. Therefore it is necessary to take advantage of the favourable conditions created by the end of the cold war before it is too late, and strengthen the collective security system of the United Nations by implementing the provisions of the Charter, amending some of them, and adding some more, if necessary.

34. Brian Urquhart, "Who can stop the Civil Wars ?" The New York Times, December 29, 1991.

Decision Making :

The foremost stage in the implementation of Chapter VII is the determination by the Security Council of the existence of a threat to peace, breach of peace, or act of aggression, and decisions about suitable action to restore peace (Art. 39). Any decision of this kind by the Security Council can be taken only if all the permanent members occur. It is necessary for all permanent members to create the right climate for such a concurrence to take place. Of late, an impression has been created by the United States, through its policies and actions, that it has hijacked the Security Council and made it an instrument of its national interests. Such an impression can be highly injurious to the successful functioning of the Security Council in future. And secondly, in order that the decisions of the Security Council are implemented effectively by those who are capable of sharing the burdens of implementation, more members must be added to the Security Council (as discussed earlier) so that they are participants in taking decisions which they are called upon to implement.

Enforcement Action :

In the history of the United Nations, enforcement action has so far been taken only twice, namely, against North Korea in June 1950 in pursuance of a Security Council Resolution of 27 June, and against Iraq in January 1991 in pursuance of Security Council resolution of 29 November 1990. Both these cases cannot be regarded as providing a hopeful precedent for the future. In the Korean case, the Security Council resolution could be passed because of the absence of the Soviet Union which was boycotting the Council in protest against denial of its due seat to communist China in the United Nations. In the case of Iraq, China abstained on the resolution. In both cases, permanent member's unanimity

prevailed only in the technical sense, and the political consensus war either not there or highly fragile.

In the light of this experience, it is necessary to evolve a more credible and durable system of enforcement action, which is perceived to be a genuinely U.N. action by virtue of being free from over-dependence on one nation, and which enables the Security Council and/or Secretary General to act more rapidly. In this connection, two ideas have been advanced from responsible quarters in the recent past. One pertains to the implementation of Article 43 of the Charter whereby member states signs special agreements with the Security Council to make armed forces, assistance and facilities available for the purposes stated in Article 42, not only on an *ad hoc* but on a permanent basis. This suggestion has been made, among others, by the U.N. Secretary General, Dr. Boutros-Ghali, in his Agenda for Peace. The importance of this suggestion emanates from the fact that whether for enforcement action, or peace-keeping, or peace building, the U.N. Secretariat is called upon to improvise each new operation from a scratch, sometimes entailing delay which is injurious to the cause of peace.

According to Dr. Ghali, "the ready availability of armed forces on call could serve, in itself, as a means of deterring breaches of the peace since a potential aggressor would know that the Council had at its disposal a means of response." Dr. Ghali also feels that under the political circumstances that now exist for the first time since the Charter was adopted, the long standing obstacles to the conclusions of such special agreements should no longer prevail. Dr. Ghali emphasized the importance of implementing Article 47 also pertaining to the role of the Military Staff Committee.³⁵

35. Boutros Boutros Ghali, "An Agenda for Peace", United Nations, New York, 1992, P. 25.

The other idea pertains to the creation of peace-enforcement units which would be deployed in implementation of "provisional measures" suggested by the Security Council under Article 40 of the Charter, without prejudice to the positions of the parties concerned, and quite distinct from the forces visualised under Article 43. This idea is an exclusive contribution of Dr. Ghali in his Agenda for Peace.³⁶ It is based on his belief that while the mission of forces under Article 43 would be to respond to outright aggression, imminent or actual, and the availability of such force might take some time, it is necessary in the meanwhile to create a kinds of rapid development force to meet other situations. Such situations would include for instance a quick implementation of a ceasefire agreement.

Peace-keeping operations :

Peace-keeping has been described as an invention of the United Nations. It is different from the Kind of action visualized under Chapter VII of the UN Charter, and yet has played a significant role in bringing stability to numerous tension spots in the world.

Since the end of the cold wear, U.N. peace-keeping operations have come to play an even more important role. It should be noted that the role of peace-keeping operation has become diversified, and includes, for example, monitoring of national elections for the establishing of new democratic governments, human rights monitoring, and assistance in the establishment of civilian police forces. As a result, peace-keeping is now regarded a part of the peace process.³⁷

The electoral assistance aspect of the U.N. peace-keeping

36. Ibid ; P. 25.

37. For the U.N. Peace-keeping operation see the websites of U.N. Peace-Keeping operation-<http://www.un.org/esa/>

operations is indispensable in assuring that elections held at the final stage of the peace process are free and fair. The successful elections in Namibia, Cambodia, and El Salvador were testimony to the essential role of the election monitoring and observation components of peace-keeping operations. The participation of civilian personnel in peace-keeping, particularly in the field of election monitoring, is becoming increasingly important.

Although Peace-keeping operations with their expanded mandates are playing a constructive role for peace and stability, it is important to keep in mind the lesson of Somalia. Peace-enforcement units, as proposed by Boutros-Ghali in his report *An Agenda for Peace* should be deployed only after a careful and thorough study of the situation is made. On the other hand, the concepts of preventive diplomacy and preventive deployment, which he also discussed in that report, may be usefully considered, provided the host countries consent to such activities.

The renewal of interest in improving the UN's efficacy through fundamental structural reforms seems encouraging. The fact that the taboo touching the Charter is apparently fading could be considered as especially positive. But the prospects that a comprehensive conception of U.N. reform³⁸ will gain acceptance in the near future remain slight. The various existing proposals are inspired by different visions of the future and of the role of a world organization. There is no consensus of any kind among specialists diplomats, governments ; and public opinion does not seem to be much concerned. This absence of consensus has different consequences in the economic, social and in the security fields.

It is necessary to conclude this analysis of how to strengthen

38. See the U.N. websites on U.N. reform—
<http://www.un.org/reform/>

the collective security system of the United Nations by emphasizing that the Security Council must act in all situations which pose a threat to peace, and not only in those which are of direct strategic interest to big powers. Similarly, the Security Council must respond to situations of human disaster, like floods, famine, drought, disease, and large-scale international terrorism, with greater speed and seriousness than in the past, because these disasters constitute no smaller threats to international security than those conventionally recognized. And finally, every member of the United Nations must bear in mind that the only durable guarantee of international peace and security is the evolution of a just and democrated world order to which every member must make a conscious contribution, and in which the United Nations must occupy a central place.

APPENDICES

APPENDIX I
CHARTER OF THE UNITED NATIONS
[EXCERPTS]

We the Peoples of the United Nations determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and/to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and/to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

And for these ends

to practise tolerance and live together in peace with one another as good neighbours, and/to unite our strength to maintain international peace and security, and/to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and/to employ international machinery for the promotion of the economic and social advancement of all peoples.

Have resolved to combine our efforts to accomplish these aims

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are :

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

.....

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article I, shall act in accordance with the following Principles.

.....

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 5

A Member of the United Nations against which preventive of

enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

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CHAPTER IV

THE GENERAL ASSEMBLY

.....

Functions and Powers

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Members of the United Nations, or by the Security

Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2 and except as provided in Article 12, may make recommendations with regard many such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

.....

CHAPTER V

THE SECURITY COUNCIL

.....

Functions and Powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace

and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

.....

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

.....

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or

deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Members, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armament and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decision of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decision shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as

are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

.....

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

.....

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

.....

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the

United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

.....

Source—M.V. Naidu, "Collective Security and the United Nations," The Macmillan company of India Ltd. New Delhi 1974, See also K.P. Saksena, "The United Nations and Collective Security," D.K. Publishing House, New Delhi, 1974—PP. 391-423.

—See also websites of the United Nations for U.N. Charter - <http://www.un.org/aboutun/charter/>.

—See also website for Security Council—
<http://www.un.org/docs/sc.htm>.

APPENDIX II

SELECTED UN RESOLUTIONS ON KOREA

RESOLUTION S/1501, 25 JUNE 1950

The Security Council,

Recalling the finding of the General Assembly in its resolution of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government "having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; and that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such government in Korea".

Mindful of the concern expressed by the General Assembly in its resolution of 12 December 1948 and 21 October 1949 of the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the situation described by the United Nations Commission on Korea in its report menaces the safety and well being of the Republic of Korea and of the people of Korea and might lead to open military conflict there;

Noting with grave concern the armed attack upon the Republic of Korea by forces from North Korea,

Determines that this action constitutes a breach of the peace,

- I. Calls for the immediate cessation of hostilities; and calls upon the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel;
- II. Requests the United Nations Commission on Korea
 - (a) To communicate its fully considered recommendations on the situation with the least possible delay,
 - (b) To observe the withdrawal of the North Korean forces to the 38th parallel, and
 - (c) To keep the Security Council informed on the execution of this resolution;
- III. Calls upon all Members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities.

RESOLUTION S/1511, 27 JUNE 1950

The Security Council,

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having called for an immediate cessation of hostilities, and

Having called upon the authorities of North Korea to withdraw forthwith their armed forces to the 38th parallel, and

Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel and that urgent military measures are required to restore international peace and security, and

Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,

Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.

RESOLUTION S/1588, 7 JULY 1950

The Security Council,

Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

Having recommended that Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area,

1. Welcomes the prompt and vigorous support which governments and peoples of the United Nations have given to its resolutions of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area;

2. Notes that Members of the United Nations have transmitted to the United Nations offers of assistance for the Republic of Korea;

3. Recommends that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States;

4. Requests the United States to designate the commander of such forces;

5. Authorizes the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating;

6. Requests the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.

APPENDIX III
UN RESOLUTION 317(V), 3 NOVEMBER, 1950

UNITING FOR PEACE

A

The General Assembly,

Recognizing that the first two stated Purposes of the United Nations are :

"To maintain international peace and security, and to that end : to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace", and

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace",

Reaffirming that it remains the primary duty of all Members of the United Nations, when involved in an international dispute, to seek settlement of such a dispute by peaceful means through the procedures laid down in Chapter VI of the Charter, and recalling the successful achievements of the United Nations in this regard on a number of previous occasions,

Finding that international tension exists on a dangerous scale,

Recalling its resolution 290 (IV) entitled "Essentials of Peace",

which states that disregard of the Principles of the United Nations is primarily responsible for the continuance of international tension, and desiring to contribute further to the objectives of that resolution.

Reaffirming the importance of the exercise by the Security Council of its primary responsibility for the maintenance of international peace and security, and the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,

Reaffirming that the initiative in negotiating the agreements for armed forces provided for in Article 43 of the Charter belongs to the Security Council and desiring to ensure that, pending the conclusion of such agreements, the United Nations has at its disposal means for maintaining international peace and security,

Conscious that failure of the Security Council to discharge its responsibilities on behalf of all the Member States, particularly those responsibilities referred to in the two preceding paragraphs, does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security,

Recognizing in particular that such failure does not deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security,

Recognizing that discharge by the General Assembly of its responsibilities in these respects calls for possibilities of observation which would ascertain the facts and expose aggressors; for the existence of armed forces which could be used collectively; and for the possibility of timely recommendation by the General Assembly to Members of the United Nations for collective action which, to be effective, should be prompt,

A

1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations;

2. Adopts for this purpose the amendments to its rules of procedure set forth in the annex to the present resolution;

B

3. Establishes a Peace Observation Commission which, for the calendar years 1951 and 1952, shall be composed of fourteen Members, namely : China, Colombia, Czechoslovakia, France, India, Iraq, Israel, New Zealand, Pakistan, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and northern Ireland, the United States of America and Uruguay, and which could observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security. Upon the invitation or with the consent of the State into whose territory the Commission would go, the General Assembly,

or the Interim Committee when the Assembly is not in session, may utilize the Commission if the Security Council is not exercising the functions assigned to it by the Charter with respect to the matter in question. Decisions to utilize the commission shall be made on the affirmative vote of two-thirds of the members present and voting. The Security Council may also utilize the Commission in accordance with its authority under the Charter;

4. Decides that the Commission shall have authority in its discretion to appoint sub-commissions and to utilize the services of observers to assist it in the performance of its functions;

5. Recommends to all governments and authorities that they co-operate with the Commission and assist it in the performance of its functions;

6. Request the Secretary-General to provide the necessary staff and facilities, utilizing, where directed by the Commission, the United Nations Panel of Field Observers envisaged in General Assembly resolution 297 B (IV);

C

7. Invites each Member of the United Nations to survey its resources in order to determine the nature and scope of the assistance it may be in a position to render in support of any recommendations of the Security Council or of the General Assembly for the restoration of international peace and security;

8. Recommends to the States Members of the United Nations that each Member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes, for service as a United Nations unit or units, upon recommendation by the Security Council or the General Assembly,

without prejudice to the use of such elements in exercise of the right of individual or collective self-defence recognized in Article 51 of the Charter;

9. Invites the Members of the United Nations to inform the Collective Measures Committee provided for in paragraph II as soon as possible of the measures taken in implementation of the preceding paragraph;

10. Requests the Secretary-General to appoint, with the approval of the Committee provided for in paragraph II, a panel of military experts who could be made available, on request, to Member States wishing to obtain technical advice regarding the organization, training, and equipment for prompt service as United Nations units of the elements referred to in paragraph 8;

D

11. Establishes a Collective Measures Committee consisting of fourteen Members, namely : Australia, Belgium, Brazil, Burma, Canada, Egypt, France Mexico, Philippines, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Yugoslavia, and directs the Committee, in consultation with the Secretary-General and with such Member States as the Committee finds appropriate, to study and make a report to the Security Council and the General Assembly, not later than 1 September 1951, on methods, including those in section C of the present resolution, which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements (Articles 51 and 52 of the Charter);

12. Recommends to all Member States that they co-operate with the Committee and assist it in the performance of its functions;

13. Requests the Secretary-General to furnish the staff and facilities necessary for the effective accomplishment of the purposes set forth in sections C and D of the present resolution :

E

14. Is fully conscious that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of, human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly.

15. Urges Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas.

B

For the purpose of maintaining international peace and security, in accordance with the Charter of the United Nations, and, in particular, with Chapters V, VI and VII of the Charter,

The General Assembly

Recommends to the Security Council :

That it should take the necessary steps to ensure that the action provided for under the Charter is taken with respect to threats to the peace, breaches of the peace or acts of aggression and with respect to the peaceful settlement of disputes or situations likely to endanger the maintenance of international peace and security;

That it should devise measures for the earliest application of Articles 43, 45, 46 and 47 of the Charter of the United Nations regarding the placing of armed forces at the disposal of the Security Council by the States Members of the United Nations and the effective functioning of the Military Staff Committee;

The above dispositions should in no manner prevent the General Assembly from fulfilling its functions under resolution 377A(V).

C

The General Assembly

Recognizing that the primary function of the United Nations Organization is to maintain and promote peace, security and justice among all nations,

Recognizing the responsibility of all Member States to promote the cause of international peace in accordance with their obligations as provided in the Charter,

Recognizing that the Charter charges the Security Council with the primary responsibility for maintaining international peace and security,

Reaffirming the importance of unanimity among the permanent members of the Security Council on all problems which

are likely to threaten world peace, Recalling General Assembly resolution 190(III) entitled "Appeal to the Great Powers to renew their efforts to compose their differences and establish a lasting peace",

Recommends to the permanent members of the Security Council that :

- (a) They meet and discuss, collectively or otherwise, and, if necessary, with other States concerned, all problems which are likely to threaten international peace and hamper the activities of the United Nations, with a view to their resolving fundamental differences and reaching agreement in accordance with the spirit and letter of the Charter;
- (b) They advise the General Assembly and, when it is not in session, the Members of the United Nations, as soon as appropriate, of the results of their consultations.

APPENDIX IV

SELECTED RESOLUTIONS ON UNEF FOR SUEZ

RESOLUTION 977 (ES-I), 2 NOVEMBER 1956

The General Assembly,

Noting the disregard on many occasions by parties to the Israel- Arab armistice agreements of 1949 of the terms of such agreements, and that the armed forces of Israel have penetrated reply into Egyptian territory in violation of the General Armistice Agreement between Egypt and Israel of 24 February 1949, (Official Records of the S.C. Fourth Year, Special Supplement No. 3).

Noting that armed forces of France and the United Kingdom of Great Britain and Northern Ireland are conducting military operations against Egyptian territory,

Noting that traffic throughout the Suez Canal is now interrupted to the serious prejudice of many nations,

Expressing its grave concern over these developments,

1. Urges as a matter of priority that all parties now involved in hostilities in the area agree to an immediate cease-fire and, as part thereof, halt the movement of military forces and arms into the area;

2. Urges the parties to the armistice agreements promptly to withdraw all forces behind the armistice lines to desist from raids across the armistice lines into neighbouring territory, and to observe scrupulously the provisions of the armistice agreements;

3. Recommends that all Member States refrain from introducing military goods in the area of hostilities and in general refrain from any acts which would delay or prevent the implementation of the present resolution;

4. Urges that, upon the cease-fire being effective steps be taken to reopen the Suez Canal and restore secure freedom of navigation;

5. Requests the Sec.-Gen. to observe and report Promptly on the compliance with the present resolution to the S.C. and to the General Assembly, for such further action as they may deem appropriate in accordance with the Charter;

6. Decides to remain in emergency session pending compliance with the present resolution.

RESOLUTION 998 (ES-I), 4 NOVEMBER 1956

The General Assembly,

Bearing in mind the urgent necessity of facilitating compliance with its resolution 997 (ES-I) of 2 November, 1956,

Requests, as a matter of priority, the Sec.-Gen. to submit to it within forty-eight hours a plan for the setting up, with the consent of the nations concerned, of an emergency international U.N. Force to secure and supervise the cessation of Hostilities in accordance with all the terms of the aforementioned resolution.

RESOLUTION 999 (ES-I), 4 NOVEMBER, 1956

The General Assembly,

Noting with regret that not all the parties concerned have yet agreed to comply with the provisions of its resolution 997 (ES-I) of 2 November, 1956,

Noting the special priority given in that resolution to an immediate ceasefire and, as part thereof, to the halting of the movement of military forces and arms into the area.

Noting further that the resolution urged the parties to the armistice agreements promptly to withdraw all forces behind the

armistice lines, to desist from raids across the armistice lines into neighbouring territory, and to observe scrupulously the provisions of the armistice agreements.

1. Reaffirms its resolution 997 (ES-I) and once again calls upon the parties immediately to comply with the provisions of the said resolution ;

2. Authorizes the Sec.-Gen. immediately to arrange with the parties concerned for the implementation of the cease-fire and the halting of the movement of military forces and arms into the area, and requests him to report compliance forthwith and, in any case, not later than twelve hours from the time of adoption of the present resolution ;

3. Requests the Sec.-Gen., with the assistance of the Chief of Staff and the members of the U.N. Truce Supervision Organ., to obtain compliance of the withdrawal of all forces behind the armistice lines ;

4. Decides to meet again immediately on receipt of the Sec.-Gen.'s., report referred to in paragraph 2 of the present resolution.

RESOLUTION 1000 (ES-I), 5 NOVEMBER, 1956

The General Assembly,

Having requested the Secretary-General in its resolution 99 (ES- I) adopted on 4 November 1956, to submit to it a plan for an emergency international United Nations Force, for the purposes stated,

Noting with satisfaction the first report of the Secretary-General on the plan (A/3289), and having in mind particularly paragraph 4 of that report.

1. Establishes a United Nations Command for an emergency international. Force to secure and supervise the cessation of

hostilities in accordance with all the terms of the General Assembly resolution 997 (ES-I) of 2 November, 1956;

2. Appoints, on an emergency basis, the Chief of Staff of the United Nations Truce Supervision Organization, major-General E.L.M. Burns, as Chief of the Command;

3. Authorizes the Chief of the Command immediately to recruit, from the observer corps of the Truce Supervision Organization, a limited number of officers who shall be nationals of countries other than those having permanent membership in the Security Council; and further authorizes him, in consultation with the Secretary-General, to undertake the recruitment directly, from various Member States other than the permanent members of the Security Council, of the additional number of officers needed; and

4. Invites the Sec.-Gen. to take such administrative measures as may be necessary for the prompt execution of the actions envisaged in the present resolution.

RESOLUTION 1001 (ES-I), 7 NOVEMBER 1956

The General Assembly,

Recalling its resolution 997 (ES-I) of 2 November 1956 concerning the cease-fire, withdrawal of troops, and other matters related to the military operations in Egyptian territory; as well as its resolution 998 (ES-I) of 4 November 1956 concerning the request to the Sec.-Gen. to submit a plan for an emergency international U.N. Force.

Having established in its resolution, 1000 (ES-I) of 5 November 1956 a U.N. Command for an emergency international Force; having appointed the Chief of Staff of the U.N. Truce Supervision Organ as Chief of the Command with authorization to him to begin

the recruitment of officers for the Command and having invited the Sec.-Gen. to take the administrative measure necessary for the prompt execution of that resolution,

Noting with appreciation the second and final Report of the Sec- Gen. on the plan for an emergency international U.N. Force (A/3302) as requested in the resolution adopted by the General Assembly on 4 November 1956, and having examined that plan,

1. Expresses its approval of the guiding principles for the organization and functioning of the Force as expounded in paragraphs 6 to 9 of the Secretary-General's report;

2. Concurs in the definition of the functions of the force as stated in para. 12 of the Sec.-Gen.'s report;

3. Invites the Sec.-Gen. to continue discussions with Member Governments concerning offers of participation in the Force, toward the objective of its balanced composition;

4. Requests the Chief of Command, in consultation with the Sec.-Gen. as regards size and composition, to proceed with the full organization of the Force;

5. Approves, provisionally, the basic rule concerning the financing of the Force laid down in para. 15 of the Sec.-Gen.'s report;

6. Establishes an Advisory Committee composed of one representative from each of the following countries: Brazil, Canada, Colombia, India, Iran, Norway and Pakistan, and requests this Committee, whose Chairman shall be the Sec.-Gen., to undertake the development of those aspects of the planning for the Force and its operation not already dealt with by the General Assembly and which do not fall within the area of the direct responsibility of the Chief of Command;

7. Authorizes the Sec.-Gen. to issue all regulations and instructions, which may be essential to the effective functioning of the Force, following consultation with the Advisory Committee aforementioned; and to take all other necessary administrative and executive actions;

8. Determines that, following the fulfilment of the immediate responsibilities defined for it in operative paragraphs 6 and 7 above, the Advisory Committee appointed by the General Assembly shall continue to assist the Sec.-Gen. in the responsibilities falling to him under the present and other relevant resolutions;

9. Decides that the Advisory Committee, in the performance of its duties, shall be empowered to request the convening of the General Assembly and to report to it whenever matters arise which, in its opinion, are of such urgency and importance as to require their consideration by the General Assembly itself; and

10. Requests all member States to afford assistance as necessary to the United Nations Command in the performance of its functions, including arrangements for passage to and from the area involved.

APPENDIX V

RESOLUTIONS ON THE CONGO ADOPTED BY THE SECURITY COUNCIL AND GENERAL ASSEMBLY

S/4387, 14 JULY 1960

The Security Council,

Considering the report of the Secretary-General on a request for United Nations action in relation to the Republic of the Congo,

Considering the request for military assistance addressed to the Secretary-General by the President and the Prime Minister of the Republic of the Congo (document S/4382),

1. Calls upon the Government of Belgium to withdraw their troops from the territory of the Republic of the Congo;

2. Decides to authorize the Secretary-General to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the Government with such military assistance as may be necessary, until, through the efforts of the Congolese Government with the technical assistance of the United Nations, the national security forces may be able, in the opinion of the Government, to meet fully their tasks;

3. Requests the Secretary-General to report to the Security Council as appropriate.

S/4426, 9 AUGUST 1960

The Security Council,

Recalling its resolution of 22 July 1960 (S/4405) *inter alia*, calling upon the Government of Belgium to implement speedily the Security Council resolution of 14 July (S/4387) on the

withdrawal of their troops, and authorizing the Secretary-General to take all necessary action to this effect,

Having noted the second report by the Secretary-General on the implementation of the aforesaid two resolutions and his statement before the Council,

having considered the statements made by the representatives of Belgium and the Republic of the Congo to this Council at this meeting,

Noting with satisfaction the progress made by the United Nations in carrying out the Security Council resolution in respect of the territory of the Republic of the Congo other than the Province of Katanga,

Noting however that the United Nations had been prevented from implementing the aforesaid resolutions in the Province of Katanga although it was ready, and in fact attempted, to do so,

Recognizing that the withdrawal of Belgian troops from the Province of Katanga will be a positive contribution to and essential for the proper implementation of the Security Council resolutions,

1. Confirms the authority given to the Secretary General by the Security Council resolution of 14 July and 22 July 1960 and requests him to continue to carry out the responsibility placed on him thereby.

2. Calls upon the Government of Belgium to withdraw immediately its troops from the Province of Katanga under speedy modalities determined by the Secretary-General and to assist in every possible way the implementation of the Council's resolutions;

3. Declares that the entry of the United Nations force into the Province of Katanga is necessary for the full implementation of this resolution;

4. Reaffirms that the United Nations force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise;

5. Calls upon all Member States, in accordance with Articles 25 and 49 of the Charter, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council;

6. Requests the Secretary-General to implement this resolution and to report further to the Security Council as appropriate.

A/4510, RESOLUTION 1474, REV. 1 (ES-IV),

20 SEPTEMBER 1960

The General Assembly,

Having considered the situation in the Republic of the Congo,

Taking note of the resolutions of 14 and 22 July and of 9 August of the Security Council,

Taking into account the unsatisfactory economic and political conditions that continue in the Republic of the Congo,

Considering that, with a view to preserving the unity, territorial integrity and political independence of the Congo, to protecting and advancing the welfare of its people, and to safeguarding international peace, it is essential for the United Nations to continue to assist the Central Government of the Congo,

1. Fully supports the resolution of 14 and 22 July and of 9 August of the Security Council;

2. Requests the Secretary-General to continue to take vigorous action in accordance with the terms of the aforesaid resolutions and to assist the Central government of the Congo in

the restoration and maintenance of law and order throughout the territory of the Republic of the Congo and to safeguard its unity, territorial integrity and political independence in the interests of international peace and security;

3. Appeals to all Congolese within the Republic of the Congo to seek a speedy solution by peaceful means of all their internal conflicts for the unity and integrity of the Congo, with the assistance, as appropriate, of Asian and African representatives appointed by the Advisory Committee on the Congo, in consultation with the Secretary-General, for the purpose of conciliation;

4. Appeals to all member Governments for urgent voluntary contributions to a United Nations Fund for the Congo to be used under United Nations control and in consultation with the Central government for the purpose of rendering the fullest possible assistance to achieve the objective mentioned in the preamble;

5. Requests

(a) All States to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Congo of its authority and also to refrain from any action which might undermine the unity, territorial integrity and political independence of the Republic of the Congo;

(b) All Member States, in accordance with Articles 25 and 49 of the Charter, to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council;

6. Without prejudice to the sovereign rights of the Republic of the Congo, calls upon all States to refrain from the direct and

indirect provision of arms or other material of war and military personnel and other assistance for military purposes in the Congo during the temporary period of military assistance through the United Nations, except upon the request of the United Nations through the Secretary-General for carrying out the purposes of this resolution and of the resolutions of 14 and 22 July and of 9 August 1960 of the Security Council.

[This resolution was adopted by 70 votes to 1, with 11 abstentions (Albania, Bulgaria, Byelorussia, Czechoslovakia, France, Hungary, Poland, Romania, the Ukraine, Union of South Africa, and the U.S.S.R.). Bolivia was absent.]

S/4741, 21 FEBRUARY 1961

(ALSO IN DRAFT FORM, S/4722, 17 FEBRUARY 1961)

A

The Security Council,

Having considered the situation in the Congo,

Having learned with deep regret the announcement of the killing of the Congolese leaders, Mr. Patrice Lumumba, Mr. Maurice Mpolo and Mr. Joseph Okito,

Deeply concerned at the grave repercussions of these crimes and the danger of wide-spread civil war and bloodshed in the Congo and the threat to international peace and security,

Noting the Report of the Secretary-General's Special Representative (S/4691) dated 12 February 1961 bringing to light the development of a serious civil war situation and preparations therefor,

1. Urges that the United Nations take immediately all appropriate measures to prevent the occurrence of civil war in the

Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort;

2. Urges that measures be taken for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries;

3. Calls upon all States to take immediate and energetic measures to prevent the departure of such personnel for the Congo from their territories, and for the denial of transit and other facilities to them;

4. Decides that an immediate and impartial investigation be held in order to ascertain the circumstances of the death of Mr. Lumumba and his colleagues and that the perpetrators of these crimes be punished;

5. Reaffirms the Security Council resolutions of 14 July, 22 July, and 9 August 1960 and the General Assembly resolution 1974 (ES-IV) of 20 September 1960 and reminds all States of their obligation under these resolutions.

B

The Security Council,

Gravely concerned at the continuing deterioration in the Congo, and the prevalence of conditions which seriously imperil peace and order, and the unity and territorial integrity of the Congo, and threaten international peace and security,

Noting with deep regret and concern the systematic violations of the human rights and fundamental freedoms and the general absence of rule of law in the Congo,

Recognizing the imperative necessity of the restoration of

parliamentary institutions in the Congo in accordance with the fundamental law of the country, so that the will of the people should be reflected through the freely elected Parliament,

Convinced that the solution of the problem of Congo lies in the hands of the congolese people themselves without any interference from outside and that there can be no solution without conciliation,

Convinced further that the imposition of any solution, including the formation of any government not based on genuine conciliation would, far from settling any issues, greatly enhance the dangers of conflict within the Congo and threat to international peace and security,

1. Urges the convening of the Parliament and the taking of necessary protective measures in that connection;

2. Urges that Congolese armed units and personnel should be reorganized and brought under discipline and control, and arrangements be made on impartial and equitable bases to that end and with a view to the elimination of any possibility of interference by such units and personnel in the political life of the Congo;

3. Calls upon all States to extend their full co-operation and assistance and take such measures as may be necessary on their part, for the implementation of this resolution.

[This resolution was adopted by nine votes to zero, with two abstentions—France, the U.S.S.R.]

S/5002, 24 November 1961

The Security Council,

Recalling its resolutions S/4387, S/4405 S/4426 and S/4741,

Recalling further General Assembly resolutions 1474 (ES-IV), 1592 (XV), 1599 (XV) and 1601 (XV),

Reaffirming the policies and purposes of the United Nations with respect to the Congo (Leopoldville) as set out in the aforesaid resolutions, namely :

- (a) To maintain the territorial integrity and the political independence of the Republic of the Congo;
- (b) To assist the Central Government of the Congo in the restoration and maintenance of law and order;
- (c) To prevent the occurrence of civil war in the Congo;
- (d) To secure the immediate withdrawal and evacuation from the Congo of all foreign military, para-military and advisory personnel not under the United Nations Command, and all mercenaries; and
- (e) To render technical assistance,

Welcoming the restoration of the national Parliament of the Congo in accordance with the *Loi fondamentale* and the consequent formation of a Central Government on 2 August 1961,

Deploring all armed action in opposition to the authority of the government of the Republic of the Congo, specifically secessionist activities and armed action now being carried on by the Provincial Administration of Katanga with the aid of external resources and foreign mercenaries, and completely rejecting the claim that Katanga is a "sovereign independent nation,"

Noting with deep regret the recent and past actions of violence against United Nations personnel,

Recognizing the Government of the republic of the Congo as exclusively responsible for the conduct of the external affairs of the Congo,

bearing in mind the imperative necessity of speedy and effective action to implement fully the policies and purposes of the United Nations in the Congo to end, the unfortunate plight of the Congolese people, necessary both in the interests of world peace and international co-operation, and stability and progress of Africa as a whole,

1. Strongly deprecates the secessionist activities illegally carried out by and manned by foreign mercenaries;

2. Further deprecates the armed action against United Nations force, and personnel in the pursuit of such activities;

3. Insists that such activities shall cease forthwith, and calls upon all concerned to desist therefrom ;

4. Authorizes the Secretary-General to take vigorous action, including the use of requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and para-military personnel and political advisers not under the United Nations Command, and mercenaries as laid down in paragraph A-2 of the Security Council resolution of 21 February 1961;

5. Further requests the Secretary-General to take all necessary measures to prevent the entry or return of such elements under whatever guise and also of arms, equipment or other material in support of such activities;

6. Requests all States to refrain from the supply of arms, equipment or other material which could be used for warlike purposes, and to take the necessary measures to prevent their nationals from doing the same, and also to deny transportation and transit facilities for such supplies across their territories, except in accordance with the decisions, policies and purposes of the United Nations;

7. Calls upon all Member States to refrain from promoting, condoning, or giving support by acts of omission or commission, directly or indirectly, to activities against United Nations often resulting in armed hostilities against the United Nations forces and personnel;

8. Declares that all secessionist activities against the Republic of the Congo are contrary to the *Loi fondamentale* and Security Council decisions and specifically demands that such activities which are now taking place in Katanga shall cease forthwith;

9. Declares full and firm support of the Central Government of the Congo, and the determination to assist that Government in accordance with the decision of the United Nations to maintain law and order and national integrity, to provide technical assistance and to implement those decisions;

10. Urges all Member States to lend their support, according to their national procedures, to the Central Government of the Republic of the Congo, in conformity with the Charter and the decisions of the United Nations;

11. Requests all Member States to refrain from any action which may directly or indirectly impede the policies and purposes of the United Nations in the Congo and is contrary to its decisions and the general purpose of the Charter.

AGREEMENT BETWEEN THE UNITED NATIONS AND THE CONGOLESE GOVERNMENT

[This 'basic agreement' between Secretary-General Hammarskjöld and the Congo was initialled on July 29, 1960. It was circulated as document S/4389/Add. 5.]

1. The Government of the Republic of the Congo states that,

in the exercise of its sovereign rights with respect to any question concerning the presence and functioning of the United Nations Force in the Congo, it will be guided, in good faith, by the fact that it has requested military assistance from the United Nations and by its acceptance of the resolutions of the Security Council of 14 and 22 July 1960; it likewise states that it will ensure the freedom of movement of the Force in the interior of the country and will accord the requisite privileges and immunities to all personnel associated with the activities of the Force.

2. The United Nations takes note of this statement of the Government of the Republic of the Congo and states that, with regard to the activities of the United Nations force in the Congo it will be guided, in good faith, by the task assigned to the Force in the aforementioned resolutions; in particular the United Nations reaffirms, considering it to be in accordance with the wishes of the Government of the Republic of the Congo, that it is prepared to maintain the United Nations Force in the Congo, until such time as it deems the latter's task to have been fully accomplished.

3. The Government of the Republic of the Congo and the Secretary-General state their intention to proceed immediately, in the light of paragraphs 1 and 2 above, to explore jointly specific aspects of the functioning of the United Nations Force in the Congo, notably with respect to its deployment, the question of its lines of communication and supply, its lodging and its provisioning; the Government of the Republic of the Congo, confirming its intention to facilitate the functioning of the United Nations Force in the Congo, and the United Nations have agreed to work together to hasten the implementation of the guiding principles laid down in consequence of the work of joint exploration on the basis of the resolutions of the Security Council.

4. The foregoing provisions shall likewise be applicable, as appropriate, to the non-military aspects of the United Nations operation in the Congo.

Source :

1. M.V. Naidu, "Collective Security And The United Nations" The Macmillan Company of India Ltd., Delhi, 1974, pp-133-149.
2. See also websites of United Nations for Security Council Documents—
<http://www.un.org/docs/sc/scouncil.Index.html/> ;
and for Security Council Resolutions-
[gopher://gopher.undp.org:70/11/undocs/secl/](http://gopher.undp.org:70/11/undocs/secl/).

APPENDIX VI

12 KEY UNITED NATIONS RESOLUTIONS ADOPTED AGAINST IRAQ

Condemned Iraq's invasion of Kuwait. Demanded Baghdad withdraw.

Imposed sanctions on all trade to and from Iraq except for medicine and in humanitarian circumstances, foodstuffs.

Declared null and void Iraq's annexation of Kuwait.

Demanded Iraq allow foreign nationals to leave Iraq and Kuwait and rescind its order to close diplomatic missions in Kuwait.

Permitted use of limited naval force to ensure compliance with economic sanctions, including the right to inspect cargos.

Approved food shipments to Iraq and Kuwait for humanitarian purposes, if distributed by international groups.

Condemned raids by Iraqi troops in French and other diplomatic missions in occupied Kuwait.

Entrusted sanctions committee to evaluate requests for assistance from countries suffering due to embargo.

Prohibited non-humanitarian air traffic into Iraq and occupied Kuwait.

Asked states to document financial losses and human rights violations resulting from the invasion.

Asked the U.N. Secretary-General to safeguard a smuggled copy of Kuwait's pre-invasion population register.

Authorized states "to use all necessary means" against Iraq unless it withdrew from Kuwait on or by Jan. 15.

APPENDIX VII
SECURITY COUNCIL RESOLUTION 686
(MARCH 2, 1991)

The Security Council

Recalling and reaffirming its resolutions 660 (1990), 661 (1990), 664 (1990), 665 (1990), 666 (1990) 667 (1990) 669 (1990), 670 (1990), 674 (1990), 677 (1990), and 678 (1990).

Recalling the obligations of Member States under Article 25 of the Charter.

Recalling paragraph 9 of resolution 661 (1990) regarding assistance to the Government of Kuwait and paragraph 3(c) of that resolution regarding supplies strictly for medical purposes and in humanitarian circumstances, food-stuffs.

Taking note of the letters of the Foreign Minister of Iraq confirming Iraqis agreement to comply fully with all of the resolutions noted above (S/22275) and stating its intention of release of prisoners of war immediately (S/22273).

Bearing in mind the need to be assured of Iraq's peaceful intentions and the objective in resolution 678 (1990) of restoring international peace and security in the region.

Underlining the importance of Iraq taking the necessary measures which would permit a definitive end to the hostilities.

Affirming the commitment of all Member States to the independence, sovereignty and territorial integrity of Iraq and Kuwait and noting the intention expressed by the Member States cooperating under paragraph 2 Security Council resolution 679 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with achieving the objectives of the resolution.

Acting under Chapter VII of the Charter.

1. Affirms that all twelve resolutions noted above continue to have full force and effect;

2. Demands that Iraq implement its acceptance of all twelve resolutions noted above and in particular that Iraq.

- (a) Rescind immediately its actions purporting to annex Kuwait;
- (b) Accept in principle its liability under international law for any loss, damage or injury arising in regard to Kuwait and third States and their nationals and corporations as a result of the invasion and illegal occupation of Kuwait by Iraq.
- (c) Immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies, or Red Crescent Societies, all Kuwaiti and third country nationals detained by Iraq and return the remains of any deceased Kuwaiti and third country nationals so detained and immediately begin to return Kuwaiti property seized by Iraq to be completed in the shortest possible period.

Further demands that Iraq

- (a) Cease hostile or provocative actions by its forces against all Member States, including missile attacks and flights of combat aircraft.
- (b) Designate military commanders to meet with counterparts from the forces of Kuwait and the Member States cooperating with Kuwait pursuant to resolution 678 (1990) to arrange for the military aspects of a cessation of hostilities at the earliest possible time.

- (c) Arrange for immediate access to and release of all prisoners of war under the auspices of the International Committee of the Red Cross and return the remains of any deceased personnel of the forces of Kuwait and the Member States cooperating with Kuwait pursuant to resolution 678 (1990) and

Provide all information and assistance in identifying Iraqi mines booby traps and other explosives as well as any chemical and biological weapons and material in Kuwait, in areas of Iraq where forces of Member States cooperating with Kuwait pursuant to resolution 678 (1990) are present temporarily and in the adjacent waters;

4. Recognize that during the period required for Iraq to comply with paragraphs 2 and 3 above, the provisions of paragraph 2 of resolution 678 (1990) remain valid;

5. Welcomes the decision of Kuwait and the Member States cooperating with Kuwait pursuant to resolution 678 (1990) to provide access and to commence immediately the release of Iraqi prisoners of war as required by the terms of the Third Geneva Convention of 1949, under the auspices of the international Committee of the Red Cross;

6. Requests all Member States as well as the United Nations, the specialized agencies and other international organizations in the United Nations system to take all appropriate action to cooperate with the Government and people of Kuwait in the reconstruction of their country.

7. Decides that Iraq shall notify the Secretary General and the Security Council when it has taken the actions set out above;

8. Decides that in order to secure the rapid establishment of a definitive end to the hostilities, the Security Council remains actively seized of the matter.

APPENDIX VIII

SECURITY COUNCIL RESOLUTION 687 ON A PERMANENT CEASE-FIRE BETWEEN KUWAIT AND IRAQ (5/4/1991)

The Security-Council

Recalling its resolutions 660 (1990), 662, (1990), 664 (1990), 666 (1990), 667 (1990), 669 (1990), 670 (1990), 674 (1990), 677 (1990), 678 (1990) and 686 (1991).

Welcoming the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate government.

Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991).

Reaffirming the need to be assured to Iraq's peaceful intentions in light of its unlawful invasion and occupation of Kuwait.

Taking note of the letter sent by the Foreign Minister of Iraq on February 27, 1991 (S/22275) and those sent pursuant to resolution 686 (1991) (S/22273, S/22276, S/22320, S/22321 and S/22330).

Noting that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on October 4, 1963 "Agreed Minutes Regarding the Restoration of Friendly Relations. Recognition and Related matters thereby recognizing formally the boundary between Iraq and Kuwait and the allocation of Islands, which were registered

with the United Nations in accordance with Article 102 of the Charter and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait within its borders as specified and accepted in the letter of the Prime Minister of Iraq dated July 21, 1932, and as accepted by the Ruler of Kuwait in his letter dated August 10, 1932.

Conscious of the need for demarcation of the said boundary.

Conscious also of the statements by Iraq threatening to use weapons in violation of its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of its prior use of chemical weapons and affirming that grave consequences would follow any further use by Iraq of such weapons.

Recalling that Iraq has subscribed to the Declaration adopted by all States participating in the Conference of States parties to the 1925 Geneva Protocol and Other Interested States held at Parts from 7 to 11 January 1989, establishing the objective of universal elimination of chemical and biological weapons.

Recalling further that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of April 10, 1972.

Noting the importance of Iraq ratifying this Convention.

Noting moreover the importance of all States adhering to this Convention and encouraging its forthcoming Review Conference to reinforce the authority, efficiency and universal scope of the Convention.

Stressing the importance of an early conclusion by the Conference on Disarmament of its work on a Convention of the

Universal Prohibition of Chemical Weapons and of universal adherence thereto.

Aware of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq.

Concerned by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968.

Recalling the objective of the establishment of a nuclear weapon free-zone in the region of the Middle East.

Conscious of the threat which all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons.

Conscious also of the objective of achieving balanced and comprehensive control of armaments in the region.

Conscious further of the importance of achieving the objectives noted above using all available means, including a dialogue among the States of the region.

Noting that resolutions 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait.

Noting that despite the progress being made in fulfilling the obligations of resolution 686 (1991), many Kuwaiti and third country nationals are still not accounted for and property remains unreturned.

Recalling the International Convention against the Taking of hostages, opened for signature at New York on December 18, 1979,

which categorizes all acts of taking hostages as manifestations of international terrorism.

Deploring threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq.

Taking note with grave concern of the reports of the Secretary-General of March 20, 1991 (S/22366) and March 28, 1991 (S/22409) and conscious of the necessity to meet urgently the humanitarian needs in Kuwait and Iraq.

Bearing in mind its objective of restoring international peace and security in the area as set out in recent Council resolutions.

Conscious of the need to take the following measures acting under Chapter VII of the Charter.

1. Affirms all thirteen resolutions noted above, except as expressly changed below to achieve the goals of this resolution, including a formal cease-fire.

2. Demands that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the "Agreed Minutes Between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters.", signed by them in the exercise of their sovereignty at Baghdad on October 4, 1963 and registered with the United Nations and published by the United Nations in document 7063, United Nations Treaty Series, 1964 :

3. Calls on the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material including the map transmitted by Security Council document S/22412 and to report back to the Security Council within the month ;

4. Decides to guarantee the inviolability of the above-mentioned international boundary and to take as appropriate all necessary measures to that end in accordance with the Charter.

5. Requests the Secretary-General, after consulting with Iraq and Kuwait, to submit within three days to the Security Council for its approval of plan for the the immediate deployment of a United Nation demilitarized observer unit to monitor the Khor Abdullah and a demilitarized zone, which is hereby established, extending 10 kilometers into Iraq and 5 kilometers into Kuwait from the boundary referred to in the "Agreed Minutes Between the State of Kuwait and Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters" of October 4, 1963 ; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone ; to observe any hostile or potentially hostile action mounted from the territory of one State to the other ; and for the Secretary-General to report regularly to the Council on the operations of the unit, and immediately if there are serious violations of the zone or potential threats to peace ;

6. Notes that as soon as the Secretary-General notifies the Council of the completion of the deployment of the United Nations observer unit, the condition will be established for the Member States cooperating with Kuwait in accordance with resolution 678 (1990) to bring their military presence in Iraq to an end consistent with resolution 686 (1991) ;

7. Invites Iraq to reaffirm unconditionally its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925 and to ratify the Convention on the Prohibition of the Development,

Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of April 10, 1972.

8. Decides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of ;

(a) all chemical and biological weapons and all stocks of agents and related subsystems and components and all research, development, support and manufacturing facilities ;

(b) all ballistic missiles with a range greater than 150 kilometers and related major parts, and repair and production facilities ;

9. Decides, for the implementation of paragraph 8 above, the following :

(a) Iraq submit to the Secretary General, within fifteen days of the adoption of this resolution, a declaration of the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below ;

(b) the Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the world Health Organization (WHO), within 45 days of the passage of this resolution, shall develop, and submit to the Council for approval, a plan calling for the commission of the following acts within 45 days of such approval :

(i) the forming of a Special Commission, which shall carry out immediate onsite inspection of Iraq's biological, chemical and missile capabilities, based on

Iraq's declarations and the designation of any additional locations by the Special Commission itself ;

- (ii) the yielding by Iraq of possessions to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8(a) above including items at the additional locations designated by the Special Commission under paragraph 9(b)(i) above and the destruction by Iraq, under supervision of the Special Commission, of all its missile capabilities including launchers as specified under paragraph 8(b) above ;
- (iii) the provision by the Special Commission of the assistance and cooperation to the Director-General of the International Atomic Energy Agency (IAEA) required in paragraphs 12 and 13 below ;

10. Decides that Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9 above and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with this paragraph, to be submitted to the Council for approval within 120 days of the passage of this resolution ;

11. Invites Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, of July 1, 1968 ;

12. Decides that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the

above ; to submit to the Secretary-General and the Director-General of the International Atomic Energy Agency (IAEA) within 15 days of the adoption of this resolution a declaration of the locations, amounts and types of all items specified above ; to place all of its nuclear weapons-usable materials under the exclusive control, for custody and removal, of the IAEA, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9(b) above, to accept, in accordance with the arrangements provided for in paragraph 13 below, urgent on-site inspection and the destruction, removal, or rendering harmless as appropriate of all items specified above ; and to accept the plan discussed in paragraph 13 below for the future ongoing monitoring and verification of its compliance with these undertakings :

13. Requests the Director-General of the International Atomic Energy Agency (IAEA) through the Secretary-General, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General in paragraph 9(b) above, to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission ; to develop a plan for submission to the Security Council within 45 days calling for the destruction, removal, or rendering harmless as appropriate of all items listed in paragraph 12 above ; to carry out the plan within 45 days following approval by the Security Council ; and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non- Proliferation of Nuclear Weapons, of July 1, 1968, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12 above, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections to confirm that

IAEA safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Council for approval within 120 days of the passage of this resolution ;

14. Takes note that the actions to be taken by Iraq in paragraphs 8, 9, 10, 11, 12 and 13 of this resolution represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons ;

15. Requests the Secretary-General to report to the Security Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property which Kuwait claims has not been returned or which has not been returned intact ;

16. Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to August 2, 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations as a result of Iraq's unlawful invasion and occupation of Kuwait ;

17. Decides that all Iraqi statements made since August 2, 1990, repudiating its foreign debt, are null and void, and demands that Iraq scrupulously adhere to all of its obligations concerning servicing and repayment of its foreign debt ;

18. Decides to create a Fund to pay compensation for claims that fall within paragraph 12 above and to establish a Commission that will administer the Fund ;

19. Directs the Secretary-General to develop and present to the Council for decision, no later than 30 days following the adoption of this resolution, recommendations for the Fund to meet

the requirement for the payment of claims established in accordance with paragraph 18 above and for a program to implement the decisions in paragraphs 16, 17 and 18 above, including : administration of the Fund ; mechanisms for determining the appropriate level of Iraq's contribution to the Fund based on a percentage of the value of the exports of petroleum and petroleum products from Iraq not to exceed a figure to be suggested to the Council by the Secretary-General taking into account the requirements of the people of Iraq. Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy ; arrangements for ensuring that payments are made to the Fund ; the process by which funds will be allocated and claims paid ; appropriate procedures for evaluating losses, listing claims and verifying their validity and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16 above ; and the composition of the Commission designated above ;

20. Decides, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities or products other than medicine and health supplies, and prohibitions against financial transactions related thereto, contained in resolution 661 (1990) shall not apply to foodstuffs notified to the Committee established by resolution 661 (1990) or, with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs as identified in the report of the Secretary-General dated March 20, 1991 (S/22366), and in any further findings of humanitarian need by the Committee.

21. Decides that the Council shall review the provisions of paragraph 20 above every sixty days in light of the policies and

practices of the Government of Iraq, including the implementation of all relevant resolutions of the Security Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein ;

22. Decides that upon the approval by the Council of the programme called for in paragraph 19 above and upon Council agreement that Iraq has completed all actions contemplated in paragraphs 8, 9, 10, 11 and 13 above, the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect ;

23. Decides that, pending action by the Council under paragraph 22 above, the Committee established under the resolution 661 (1990) shall be empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the activities under paragraph 20 above, exceptions to the prohibition against the import of commodities and products originating in Iraq ;

24. Decides that, In accordance with resolution 661 (1990) and subsequent related resolutions and until an further decision is taken by the council, all States shall continue to prevent the sale or supply, or promotion or facilitation of such sale or supply, to Iraq by their nationals, or from their territories or using their flag vessels or aircraft, of :

- (a) arms and related material of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production, for such equipment ;
- (b) items specified and defined in paragraph 8 and paragraph 12 above not otherwise converted above ;

(c) technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in sub-paragraphs (a) and (b) above ;

(d) personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in sub-paragraphs (a) and (b) above ;

25. Calls upon all States and international organizations to act strictly in accordance with paragraph 24 above, notwithstanding the existence of any contracts, agreements, licenses, or any other arrangements ;

26. Requests the Secretary-General, in consultation with appropriate Governments, to develop within 60 days, for approval of the Council, guidelines to facilitate full international implementation of paragraphs 24 and 25 above and paragraph 27 below, and to make them available to all States and to establish a procedure for updating these guidelines periodically ;

27. Calls upon all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Security Council under paragraph 26 above as may be necessary to ensure compliance with the terms of paragraph 24 above, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance ;

Agrees to review its decisions in paragraphs 22, 23, 24 and 25 above, except for the items specified and defined in paragraphs 8 and 12 above, on a regular basis and in any case 120 days following passage of this resolution, taking into account Iraq's

compliance with this resolution and general progress towards the control of armaments in the region ;

Decides that all States, including Iraq, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government of Iraq or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 661 (1990) and related resolution ;

30. Decides that in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third country nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross, providing lists of such persons facilitating the access of the International Committee of the Red Cross to all such persons wherever located or detained and facilitating the search by the International Committee of the Red Cross for those Kuwaiti and third country nationals still unaccounted for ;

31. Invites the International Committee of the Red Cross to keep the Secretary General apprised as appropriate of all activities under taken in connection with facilitating the repatriation or return of all Kuwaiti and third country nationals or their remains present in Iraq on or after August 2, 1990 ;

32. Requires Iraq to inform the Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods, and practices of terrorism ;

33. Declares that, upon official notification by Iraq to the Secretary-General and to the Security Council of its acceptance of

the provisions above, a female cease-fire is effective between Iraq and Kuwait and the Member States cooperating with Kuwait in accordance with resolution 678 (1990) ;

34. Decides to remain seized of the matter and to take such further steps as may be required for the implementation of this resolution and to secure peace and security in the area.

Source : Gazi Ibdeh Abdulghafour, "United Nations role in Gulf Crisis"
Published by Lancer Books, New Delhi, 1992, pp-154-69. See also
U.N. Security Council Resolution Websites mentioned in
Appendix V.
See website for the List of Matters considered/Action taken by the
Security Council—
<http://www.un.org/depts/dhl/resguide/scact.htm>

APPENDIX IX

GROWTH IN UNITED NATIONS MEMBERSHIP, 1945-2003

Year	Number	Member States
1945	Original 51	Argentina, Australia, Belgium, Bolivia, Brazil, Belarus, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Russian Federation, Saudi Arabia, South Africa, Syrian Arab Republic, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia
1946	55	Afghanistan, Iceland, Sweden, Thailand
1947	57	Pakistan, Yemen
1948	58	Myanmar
1949	59	Israel
1950	50	Indonesia
1955	76	Albania, Austria, Bulgaria, Cambodia, Finland, Hungary, Ireland, Italy, Jordan, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Nepal, Portugal, Romania, Spain, Sri Lanka
1956	80	Japan, Morocco, Sudan, Tunisia

1957	82 ²	Ghana, Malaysia
1958	82	Guinea
1960	99	Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Cyprus, Gabon, Madagascar, Mali, Niger, Nigeria, Senegal, Somalia, Togo, Democratic Republic of the Congo
1961	104 ³	Mauritania, Mongolia, Sierra Leone United Republic of Tanzania
1962	110	Algeria, Burundi, Jamaica, Rwanda, Trinidad and Tobago, Uganda
1963	112	Kenya, Kuwait
1964	115	Malawi, Malta, Zambia
1965	117 ⁴	Gambia, Maldives, Singapore
1966	122	Barbados, Botswana, Guyana, Lesotho
1967	123	Democratic Yemen ¹
1968	126	Equatorial Guinea, Mauritius, Swaziland
1970	127	Fiji
1971	132	Bahrain, Bhutan, Oman, Qatar, United Arab Emirates
1973	135	Bahamas, German Democratic Republic, Germany, Federal Republic of ⁶
1974	138	Bangladesh, Grenada, Guinea-Bissau
1975	144	Cape Verde, Comoros, Mozambique, Papua New Guinea, Sao Tome and Principe, Suriname
1976	147	Angola, Samoa, Scycheles
1977	149	Djibouti, Viet Nam
1978	151	Dominica, Solomon Islands

1979	152	Saint Lucia
1980	154	Saint Vincent and the Grenadines, Zimbabwe
1981	157	Antigua and Barbuda, Belize, Vanuatu
1983	158	Saint Kitts and Nevis
1984	159	Brunei Darussalam
1990	159 ^{1,6}	Liechtenstein, Namibia
1991	166	Democratic People's Republic of Korea, Estonia, Federated States of Micronesia, Latvia, Lithuania, Marshall Islands, Republic of Korea
1992	179	Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, San Marino, Slovenia, Tajikistan, Turkmenistan, Uzbekistan
1993	184 ⁷	Andorra, Czech Republic, Eritrea, Monaco, Slovak Republic, The former Yugoslav Republic of Macedonia
1994	185	Palau
1999	188	Kirivatti, Nauru, Tonga
2000	189	tuwaloo
2002	191	Switzerland, East Timore.

1. Yemen was admitted to membership in the United Nations on 30 September 1947 and Democratic Yemen on 14 December, 1967. On 22 May 1990, the two countries merged and have since been represented as one Member with the name "Yemen".

2. The total remains the same because from 21 January 1958 Syria and Egypt continued as a single member (United Arab Republic)

3. Syria resumed its status as an independent State.

4. Indonesia withdrew as of 20 January 1965.

5. Indonesia resumed its membership as of 28 September 1966.

6. The Federal Republic of Germany and the German Democratic Republic were admitted to membership in the United Nations on 18 September 1973. Through the accession of the German Democratic Republic to the Federal Republic of Germany, effective from 3 October 1990, the two German States have united to form one sovereign State.

7. Czechoslovakia was an original Member of the United Nations from 24 October 1945. In a letter dated 10 December 1992, its Permanent Representative informed the Secretary-General that the Czech and Slovak Federal Republic would cease to exist on 31 December 1992 and that the Czech Republic and the Slovak Republic, as successor States, would apply for membership in the United Nations. Following the receipt of such applications, the Security Council, on 8 January 1993 recommended to the General Assembly that the Czech Republic and the Slovak Republic be admitted to United Nations membership. They were thus admitted on 19 January 1993 as Member States.

Source : 1. Basic Facts about the United Nations Published by the United Nations Department of Public Information New York, July 1998, pp. 293-94.

2. Chronicle Books, A Division of Chronicle Publications, Pvt. Ltd., S.D.A., New Delhi, 2003, pp. 380-81.

3. See also U.N. website for U.N. Member States/U.N. missions-
<http://www.un.org/members/>.

APPENDIX X

SECRETARIES-GENERAL OF THE UNITED NATIONS

1, February 1946-10 April 1953	Trygve Lie, b. 1896, d. 1968 Norwegian. (Tendered resignation on 10 November 1952).
10, April 1953-17 September 1961	Dag Hammarskjöld, b. 1905, d. 17 September 1961 in Northern Rhodesia, Swedish.
3, November, 1961-31 December 1971	U Thant, b. 1909, d. 1974. Burmese (Was Acting Secretary-General until 1 January 1962).
1, January 1972-31 December 1981	Kurt Waldheim, b. 1918. Austrian.
1, January 1982-31 December 1991	Javier Perez de Cuellar, b. 1920, Peruvian.
1, January 1992-31 December 1996	Boutros Boutros Ghali, b. 1922, Egyptian.
1, January 1997 Till Now	Kofi Annan b. 1934, Ghanaian.

Source : Sunil Sodhi, "United Nations in A Changing World", Sanjay
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